

3 1761 06380551 9

GOVERNMENT

IN SWITZERLAND

THE

46
101
202

12⁵

THE CITIZEN'S LIBRARY
OF
ECONOMICS, POLITICS, AND
SOCIOLOGY

EDITED BY
RICHARD T. ELY, PH.D., LL.D.
DIRECTOR OF THE SCHOOL OF ECONOMICS,
POLITICAL SCIENCE, AND HISTORY,
UNIVERSITY OF WISCONSIN

GOVERNMENT IN SWITZERLAND

**THE CITIZEN'S LIBRARY OF ECONOMICS,
POLITICS, AND SOCIOLOGY.**

12mo. Half leather. \$1.25 *net* each.

MONOPOLIES AND TRUSTS.

By RICHARD T. ELY, PH.D., LL.D.

THE ECONOMICS OF DISTRIBUTION.

By JOHN A. HOBSON.

WORLD POLITICS.

By PAUL S. REINSCH, PH.D., LL.B.

ECONOMIC CRISES.

By EDWARD D. JONES, PH.D.

OUTLINE OF ECONOMICS.

By RICHARD T. ELY.

GOVERNMENT IN SWITZERLAND.

By JOHN MARTIN VINCENT, PH.D.

IN PREPARATION.

**ESSAYS IN THE MONETARY HISTORY OF
THE UNITED STATES.**

By CHARLES J. BULLOCK, PH.D.

**HISTORY OF POLITICAL PARTIES IN THE
UNITED STATES.**

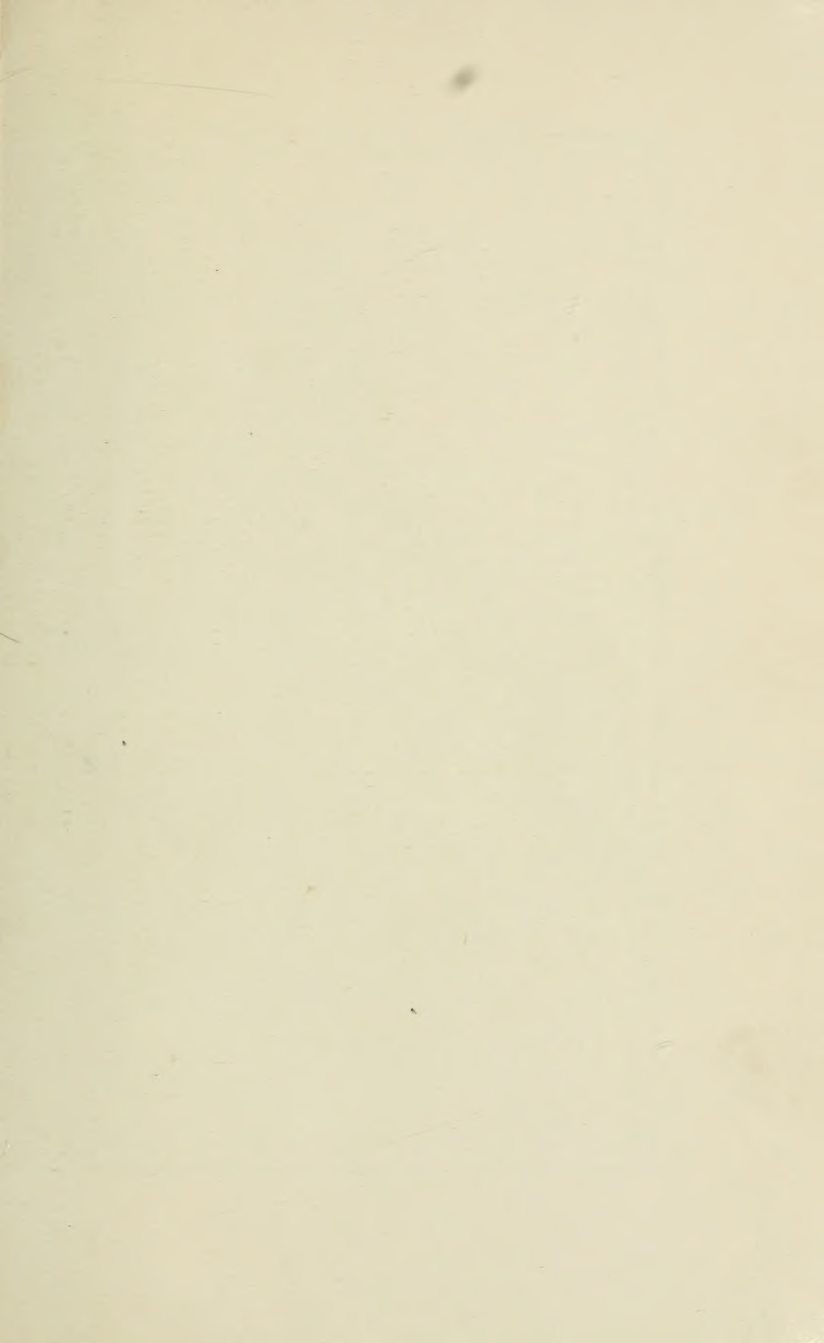
By JESSE MACY, LL.D.

MUNICIPAL ENGINEERING AND SANITATION.

By MR. M. N. BAKER.

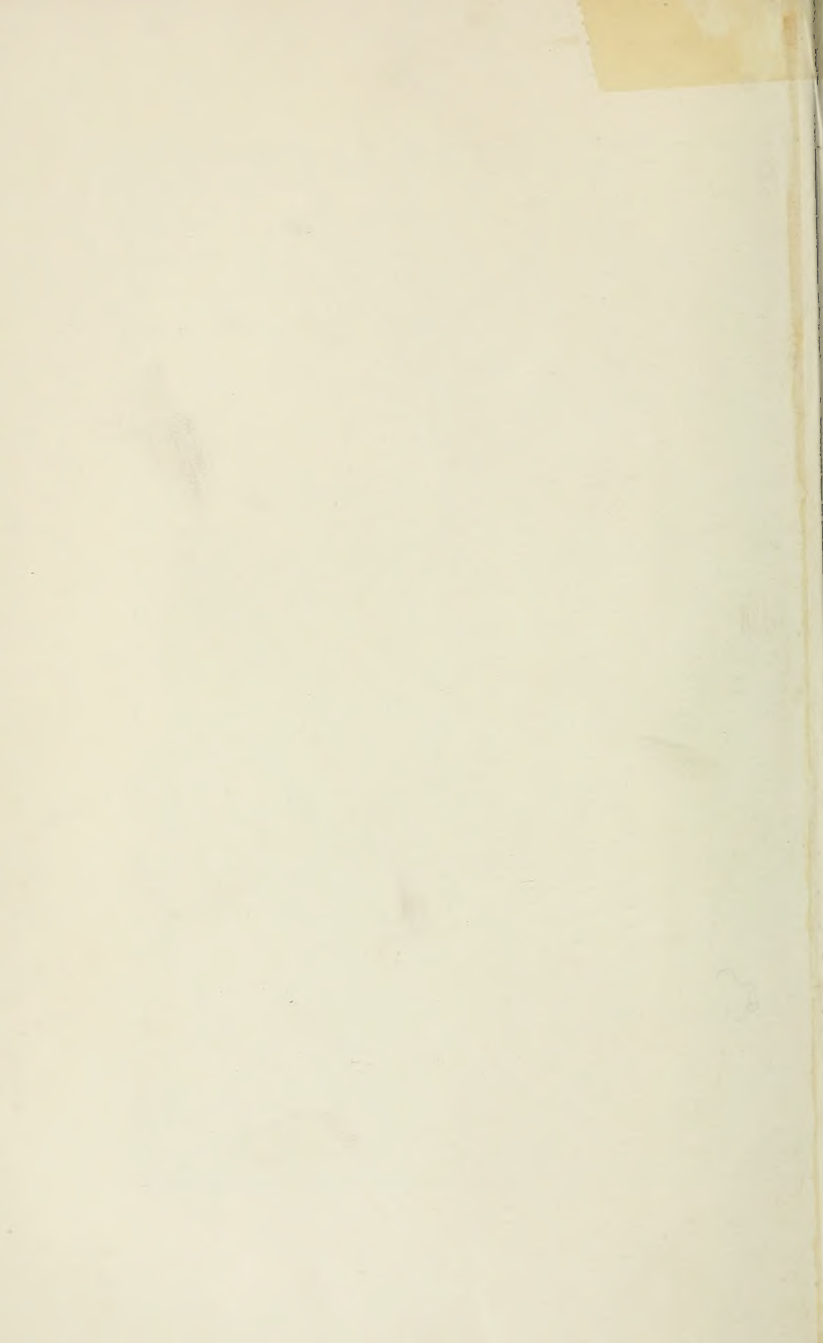
THE MACMILLAN COMPANY,

66 FIFTH AVENUE.









CITIZEN'S LIBRARY

Government in Switzerland

BY

JOHN MARTIN VINCENT, PH.D.

ASSOCIATE PROFESSOR IN THE JOHNS HOPKINS UNIVERSITY

New York

THE MACMILLAN COMPANY

LONDON: MACMILLAN AND CO., LTD.

1900

All rights reserved

115-299
91611

COPYRIGHT, 1900,
By THE MACMILLAN COMPANY.

Norwood Press
J. S. Cushing & Co. — Berwick & Smith
Norwood Mass. U.S.A.

To my Friend
CHARLES BORGEAUD

EXPOSITOR OF DEMOCRACY
IN THE UNIVERSITY OF GENEVA

PREFACE

SWITZERLAND continues to be a perennial source of attraction. More than ever, travellers seek its mountains for scenery and recreation. The most inaccessible peaks of other days are now scaled by cable roads, and the remotest cañons have become the sporting grounds of the nations.

Almost equally attractive are the peculiar institutions of the country. To a romantic interest in the dramatic portions of its history, there has succeeded a deeper curiosity regarding the political experience of this mountain republic. Intelligent observers have been making known one or another phase of civic life, until a widespread interest in Switzerland has become distinctly discernible in newspapers and political discussion.

To the American reader the subject is replete with comparisons. The federation of governments is like the union under which he lives. The rights of cantons are the rights for which the states have jealously contended; yet the problems of nation, state, and city have been so differently answered by the Swiss that the closer view is exceedingly instructive.

To reflecting citizens of all countries Switzerland has a word to say on territorial expansion, on direct legislation by the people, on the nationalization of railways and industries, on the accumulation of wealth, and on other social and economic questions of the day. Hence this book.

Some years ago the writer published an essay on Swiss government, which was so well received as to encourage him to continue his studies. Since that time many important changes have taken place in state and nation. In order to take note of these and to make the picture more complete, the earlier volume has been subjected to extensive alterations. The order of treatment has been changed, large portions have been rewritten, and much new matter has been added, in the hope that the work will prove useful both to specialist and general reader.

To the many friends who have lent me their counsel and assistance I am deeply grateful. These favors have come from both sides of the Atlantic, and have extended over many years. Libraries and public authorities in Switzerland have been gracious without exception.

To the Editor of this series I am particularly indebted for a generous fund of thoughtful suggestions.

J. M. V.

THE JOHNS HOPKINS UNIVERSITY,
September, 1900.

CONTENTS

	PAGE
PREFACE	vii

PART I

CANTONAL GOVERNMENT

I. ORIGINS OF THE COMMONWEALTH . . .	3
II. CONFEDERATION AND CANTONS . . .	40
III. CANTONAL LEGISLATION . . .	52
IV. PROPORTIONAL REPRESENTATION . . .	75
V. REFERENDUM AND INITIATIVE . . .	84
VI. THE CANTONAL EXECUTIVE . . .	91
VII. THE CANTONAL JUDICIARY . . .	101
VIII. PUBLIC SERVICE IN GENERAL . . .	108
IX. CANTONAL FINANCE . . .	112
X. COMMUNITY AND CITIZENSHIP . . .	130
XI. CHURCH AND STATE . . .	152
XII. EDUCATION . . .	165

PART II

FEDERAL GOVERNMENT

XIII. FEDERAL LEGISLATION . . .	175
XIV. THE LAW AND THE PEOPLE . . .	188
XV. THE FEDERAL JUDICIARY . . .	202

CHAPTER	PAGE
XVI. THE FEDERAL EXECUTIVE	210
XVII. THE FEDERAL ARMY	220
XVIII. INTERNATIONAL RELATIONS	229
XIX. FEDERAL FINANCE	236
XX. THE CONFEDERATION AND SOCIETY . .	256
XXI. THE CONFEDERATION AND THE INDIVIDUAL	277

APPENDICES

I. THE FIRST FEDERAL CONSTITUTION OF SWITZERLAND, 1291	285
II. THE FEDERAL CONSTITUTION, 1874 . .	289
III. LAWS ON PROGRESSIVE TAXATION . .	333
IV. LITERATURE OF SWISS CONSTITUTIONAL HISTORY	341
V. STATISTICAL TABLES	361

PART I

CANTONAL GOVERNMENT

CHAPTER I

ORIGINS OF THE COMMONWEALTH

THE origins of the political ideas and institutions of Switzerland must be sought among the laws and customs of the early Germans. Although the foothills of the Alps were for a long time occupied by tribes of Kelts, and, later on, became subject to the Roman Empire, no influence of the ancient Helvetians or of Latin civilization survived the Great Migration with strength enough to determine the form in which law and state should develop.

Two nations of Germans, the Burgundians and the Alamanni, then enemies, later confederates, took possession of Switzerland in the first half of the fifth century, and have never been supplanted. The Burgundians, already christianized, divided the soil of the southwestern part with the Roman inhabitants, became Frenchmen, and, because of their connection with the larger Burgundy of France, became members of a Swiss Confederation, only after it had been long in operation and the line of its evolution determined.

The Alamanni, still pagan, and hating the restraints of civilization, entered a land once flourishing with cities, but then almost abandoned.

GOVERNMENT IN SWITZERLAND

Neither Latin inhabitants nor Roman remains affected to any great degree their language or institutions. They grew and developed as a German nation. Their mountainous country fostered their native individuality, and they became the founders of Swiss liberty, the originators of the confederation, and were for centuries the exclusive material out of which the republic was enlarged.

Thus the foundations of the existing form of government and the political instincts of the people of to-day were in large part laid by the same Teutonic forefathers to whom we trace the constitutions of England and America.

The Alamannic invaders divided the land among themselves and settled down under separate chieftains, or kings, in different districts, and, we may believe, as in other German tribes, these districts were subdivided into *Gaue*, or counties, each of which was governed by a *Graf*, or count. The county was divided into smaller sections, called hundreds, which were presided over by *Centenarii*, or *Centgrafen*. This was, at least, the form of government when they were conquered by the Franks in the sixth century. At that time these chiefs were deprived of any semblance to royal power they may have had, and were made dukes of the Merovingian empire.

In 748 Pippin abolished the dukes, and Charles the Great completed the subjugation by causing the *Grafen* to be appointed by royal warrant instead of by popular election. In his district the

ORIGINS OF THE COMMONWEALTH

Graf administered the laws under the oversight of the royal commissioners, and commanded its army contingent in time of war. In the hundred the *Centgraf*, with the whole body of citizens assembled about him as judges and jury, held court upon minor offences, and, like the *Graf* in his larger sphere, led his neighbors to battle.

These primitive forms of government are of the first importance in a constitutional study of Switzerland, for the cradle of the confederation was at one time described in these very terms. As we may see by the name which survives, Thurgau, was a Germanic *Gau*, or county. This included originally all the northeastern and central part of Switzerland, and within its borders were hundreds which occupied the valleys of Schwyz, Uri, and Unterwalden.

In the expansion of the feudal system, and in consequence of vast endowments of churches and monasteries, proprietorship in the soil became greatly changed, and the lordship of these counties and hundreds became hereditary in different families. Many small owners put themselves under the protection of powerful lords, others placed themselves in feudal relation to the monasteries. Whole districts were granted in fief to abbeys and cloisters, and thereby received the immunities which the church then enjoyed. Hence, at the time when we first begin to hear of a Swiss Confederation, the legal and political status of the inhabitants had become very much complicated,

GOVERNMENT IN SWITZERLAND

and each of the districts had reasons of its own for revolt.

Uri had been from the ninth century a fief of the abbey of Zürich. It thereby gained immunity from the jurisdiction of the ordinary feudal magnate, and enjoyed the milder rule of the monastic officials, receiving later also the direct protection of the emperor, who appointed the advocate or overlord for all the possessions of the abbey.

The inhabitants of the lower valley of the present canton formed the "Community of the People of Uri," and regulated for themselves all matters pertaining to their common pastures and woodlands. In Schwyz also, along with some manorial subjects, there had been preserved from earlier times a *Markgenossenschaft*, or agricultural community, farming its own land and making its own local laws. The external political status of these people was not so desirable as that of Uri, since they were under the protection of neighboring magnates and only distantly attached to the empire. The same may be said of Unterwalden, except that ownership of land was more divided among monasteries and nobles and there were fewer free farmers than in Schwyz. Over both hung the constant menace that their overlords would assume not only the feudal protection of the districts, but the territorial ownership as well, and gradually deprive the small owners of their remaining rights.

We must not put too large an estimate upon the legislative powers of these communities at this

ORIGINS OF THE COMMONWEALTH

time. The scope of law-making doubtless went little beyond the concerns of their common farming and pasturage. Popular rights found expression rather in the application of law, in attendance upon court, and in sitting upon juries in local trials. Here they would jealously guard ancient usages and resent foreign interference or arbitrary interpretation. But notwithstanding their limited powers these occasional assemblies kept alive the sense of mutual dependence, and when political matters were in the air, the *Markgenossenschaft* became the centre of action. In this local agricultural freedom lay the germ of larger political liberty, and when the time came for action, the instinct and the instrumentalities were at hand.¹

At the beginning of the thirteenth century we find the dukes of Zähringen in hereditary possession of the combined offices of Count of Zürichgau, now partitioned out of Thurgau, and of advocate for the abbey of Zürich. Thus the three hundreds, Schwyz, Uri, and Unterwalden, were under the same overlord, but with far different relations. In Uri the duke exercised only a general superintendence through a sub-advocate, while in Schwyz and Unterwalden he administered the laws through his own vassals, who received the offices of *Graf* and *Centgraf* as hereditary fiefs. There was imminent danger that through long usage the local liberties of the people would gradually sink into feudal serfdom. But in 1218 the house of Zähr-

¹Cf. Dierauer, "Gesch.," I., 84.

GOVERNMENT IN SWITZERLAND

ingen became extinct and its fiefs fell back to the crown.

Zürich, city and abbey, and consequently Uri, sought and received from the emperor a renewal of their immunities.¹ The other districts began at once to strive after the same immediate attachment to the empire, and at last obtained it from Frederic II. in 1240, who decreed that Schwyz and Unterwalden should forever after be imperial fiefs and should be governed by imperial advocates.² The counts of Habsburg, who, as vassals of Zähringen, had long held the offices of *Centgraf* in these valleys, now became imperial instead of feudal administrators, and the condition of the people was so far improved that in case of misgovernment appeal could be made directly to the emperor, in place of a self-interested overlord.

In 1273 Rudolf of Habsburg was elected king. He at once confirmed the imperial relationship of Uri, but for Schwyz and Unterwalden deferred without directly refusing the renewal of the privileges of Frederic II.

The evident object was to gain by gradual usurpation the territorial lordship over these districts and add them to the increasing hereditary possessions of his family. The purchase of Luzern and many small landed properties scattered over the three cantons, the imposition of foreign bailiffs, together with increasing burdens of taxation, strengthened these suspicions, and caused not only

¹ In 1231.

² Charter in Oechsli, "Quellenbuch," I., p. 47.

ORIGINS OF THE COMMONWEALTH

Schwyz and Unterwalden, but also the imperial fief Uri, to look forward with uneasiness to the future. Rudolf died in 1291, without confirming the charters. The character of his son Albert was not such as would inspire hope of better treatment, and seventeen days¹ after Rudolf's death, the three districts entered into a league. The charter itself declares it to be a renewal of an older compact, but no document earlier than this having been preserved, this agreement is known as the First Perpetual League² and is accepted as the starting-point of the Swiss Confederation.

The object of the League of 1291 was not total independence of all outside domination, but the preservation of their old direct connection with the empire and long-accustomed local rights. The confederates solemnly agreed not to receive any judge who was not a native of their valleys, nor one who had bought his office with a price. All difficulties arising between the three cantons were to be settled by arbitration, and if any party refused to accede to a decision, the others should compel it to obey. In case of attack by any power, the other cantons should come to the help of the endangered.

But all proper feudal claims should be respected, and each district should serve its own overlord in all things so far as they were right, just, and cus-

¹ Dierauer, "Gesch.," p. 78.

² "Amtliche Sammlung der Eidgenössischen Abschiede," I., p. 241; Oechsli, "Quellenbuch," p. 49; Appendix to this volume.

GOVERNMENT IN SWITZERLAND

tomary before the time of King Rudolf. The territorial rights of the abbeys and monasteries which had lands and serfs in those valleys, the family possessions of noble houses, and the imperial overlordship were to be honored as before. Ten weeks later a defensive alliance was also entered into for three years between Uri, Schwyz, and the city of Zürich, in which mutual assistance is promised in case of attack.

The death of Rudolf was followed by the struggle for the throne of Germany between Albert, son of Rudolf, and Adolf of Nassau, in which the Swiss took sides against their hereditary overlords. Austrian forces were brought in to punish the confederates as rebellious subjects, and were strong enough to compel them to sign a peace in 1292. The danger now became imminent that Albert would proceed to take away the liberties already acquired, but, in the meanwhile, Adolf of Nassau was elected king, and the peril was averted.

Adolf left the Swiss pretty much to themselves, and finally, in 1297, renewed the imperial privileges granted by Frederic II.; but in 1298 he was killed in battle with his rival, and the confederates once more fell into the hands of the Habsburgs.

To the period which immediately follows, tradition has assigned the adventures of William Tell. Albert, on coming to the throne, was said to have sent into the cantons overbearing bailiffs who acted like overseers of private Habsburg estates rather than governors of imperial fiefs, outraging

ORIGINS OF THE COMMONWEALTH

both the written privileges of the cantons and the commonest laws of justice. It was long believed that revolt against this tyranny led to the overthrow of Austrian power in the Forest Cantons.

Whatever may have been Albert's intentions, no documents exist to prove the existence either of foreign bailiffs, William Tell, or general uprising. In 1308 Albert was murdered, and the Swiss, taking advantage of the slight interregnum and the change of dynasty which followed, obtained additional liberties. They asked and received of Henry VII. not only a confirmation of their previous imperial independence, but also the privilege that they should not be cited before any court outside their own land, except to the royal tribunal itself.¹ But in 1313 another double election of kings brought all Germany into arms and threatened once more the beginnings of freedom in the Swiss valleys. The confederates, naturally distrustful of the house of Austria, sided with Louis of Bavaria, and in consequence, Leopold, brother of the rival king Frederic, set out with an army of 10,000 men to complete that humiliation of the peasants which his father had attempted. The invaders were routed in the battle of Morgarten in 1315. Greatly inferior in numbers and weapons, the Swiss farmers fell upon the German chivalry in a narrow pass, and drove them with fearful slaughter into the adjoining lake.

¹ *Jus non evocando*. Kopp, "Urkunden," p. 103. Oechsli, "Quellenbuch," p. 52.

GOVERNMENT IN SWITZERLAND

The confederates, rendered confident by success, renewed in the same year the compact made in 1291, with the important addition that no party should submit to an overlord or negotiate with a foreign power without the consent of the others. The final success of Louis of Bavaria removed the danger of invasion for a considerable time, and peace between Austria and the Forest Cantons was definitely signed in 1323.

In 1324 Louis declared the manorial and feudal rights of the rebellious Frederic forfeited to the crown, and the tenants of his lands free imperial citizens. By this stroke the inequalities of the inhabitants were almost entirely removed, the jurisdiction of manor courts was largely replaced by the common law and customs of the land, and the sense of unity among the cantons was greatly solidified.

The next addition to this confederation of states was Luzern. Having been for hundreds of years a fief of the abbey of Murbach, and enjoying the immunities connected with ecclesiastical possessions, this city suddenly found itself in 1291 sold out to the house of Habsburg and under the domination of Duke Albert. The governor was now an appointee of a prince, anxious to extend his dominion and authority, and although this new official promised to maintain the old privileges, the political tendency of Habsburg government was plainly contrary to the interests of Luzern. The citizens were obliged to fight against their neigh-

ORIGINS OF THE COMMONWEALTH

bors in the wars of Austria with the Swiss, and had these attacks been successful, the country would have been reduced to one common dependency. These facts and the close proximity of the three imperial cantons brought about a union of Schwyz, Uri, Unterwalden, and Luzern in 1332. The territorial rights of their several overlords were distinctly reserved, but the final result could not help but be against the house of Austria.

A second infusion of the municipal element took place when Zürich was admitted into the confederation in 1351. This was an important addition, since Zürich was not only a considerable commercial centre, and the confederates thereby gained the advantages of internal free trade, but it was a walled town situated at the head of the lake, and therefore formed a strategic point on one of the main roads over the Alps. Zürich also had immediate cause to be glad of allies, for the signing of the compact was the signal for attack by an Austrian army. The siege was sustained with the help of contingents from the Forest Cantons, and the outcome of the war was that the confederation which began it with five members finished it with eight. The additions were Glarus, Zug, and Bern.

Glarus was a rural valley and Zug a small town, but both owed a certain allegiance to the house of Habsburg, which now became burdensome, and the people gladly threw in their lot with the confederates. Bern, on the other hand, had long enjoyed the rights of an imperial free city, and

GOVERNMENT IN SWITZERLAND

as such was an ally of the house of Austria in its war against the Swiss, even sending a contingent to assist in the siege of Zürich. But in fighting against the Forest Cantons, the contradiction of its interests became so apparent that as soon as peace was concluded Bern took steps toward an alliance with these neighbors. By a treaty in 1353 it entered into a perpetual league with Uri, Schwyz, and Unterwalden, upon conditions similar to those in the other agreements. With Zürich and Luzern, Bern had no connection except through the original states. If Bern desired assistance in war it called upon the Forest Cantons, and these in turn demanded the help of the cities. If Zürich and Luzern were in need, Bern was enlisted by the same mediation.

The League of Eight, as thus completed, remained without further enlargement for a century and a quarter. These details of its early history have been given with some particularity in order to show the original motives to the formation of a union, the changing circumstances which caused its continuance and enlargement, and the reasons for the peculiar nature of the federal bond. From this point onward to the close of the eighteenth century, events and institutions move with more deliberation, and, although we pass through the most brilliant period of the military ascendancy of Switzerland, there is less to record of institutional advancement.

In the course of the next one hundred and thirty

ORIGINS OF THE COMMONWEALTH

years three important landmarks are to be met in the constitutional growth of the confederation. The first is the so-called *Pfaffenbrief* of 1370. It is an agreement by means of which all the states except Bern and Glarus freed themselves from the jurisdiction of clerical courts in all temporal matters.¹

The chief provisions of this "Priest Letter" were (1) that every inhabitant who was bound by oath of vassalage to the dukes of Austria should also swear allegiance to the confederation, and that this should include clergy as well as laity, nobles as well as commoners. (2) That ecclesiastics who were not citizens of any confederate city or land, yet dwelt within the confederation, should not summon a confederate citizen before any foreign court of justice, either clerical or temporal, but should cite him before the court of the place where he resided, except in matters relating to the clergy and to marriage, which belonged to the jurisdiction of the bishop. The penalty was outlawry to any priest who disobeyed.

The document further attempted to set some limit to the disquietudes of private warfare by prohibiting armed conflicts to all who had not first obtained a government license. But the *Pfaffenbrief*, as its nickname indicates, is distinguished more than in any other way for the measures taken to diminish the abuses of clerical immunity and to cut off the jurisdiction of foreign

¹ "Eidgen. Abschiede," I., p. 301. Oechsli, I., p. 99.

GOVERNMENT IN SWITZERLAND

courts. A distinct advance was thus made in the direction of neutrality and independence.

The second constitutional monument of this period was the *Sempacher Brief* of 1393, which may be called the first war-ordinance of the confederation.¹ A secret treaty had been discovered between Austria and the Burgomaster and Privy Council of Zürich, by which the city was pledged to remain neutral if Austria made war upon the confederates. The citizens procured the overthrow and banishment of the traitors, and during the excitement caused by this narrow escape from danger, the confederates took immediate steps to tighten the bonds of union among themselves. Since they had so recently fought out their cause with Austria to an honorable result, they would now provide for future attacks by renewing their former oaths and agreements, to the end that fellow-citizens should live in peace with each other, should not violently enter each other's houses in war or peace, and should assist each other in all things without deceit. Merchants should be protected in person and in goods.

To make defence of their country more effective, regulations were made for the better conduct of war. As their forefathers had always done, each city and district was to fight under its own banner. If any one deserted the flag, his life and goods were at the disposal of his state. Even the wounded were expected to follow the banner as long as they

¹ "Eidgen. Abschiede," I., p. 327. Oechsli, p. 110.

ORIGINS OF THE COMMONWEALTH

could. No one should begin to plunder until the commander gave permission. The booty when brought in should be handed over to the officers, and these should divide it honorably among all the men alike. Cloisters and churches should not be plundered unless an enemy or his goods were concealed therein. Women should not be struck nor stabbed nor otherwise ill-treated, unless they fought themselves, or by outcry gave help to an enemy; they could then be punished according to desert.

This was the first agreement in which the confederated states all acted together without the mediation of the original cantons or through the indirect connection of cities. Its name came from the fact that the battle of Sempach, in 1386, is several times mentioned as showing examples of the evils which the treaty sought to abolish, and one Swiss historian goes so far as to call it the first attempt made by any people to temper by agreement the savagery of war.¹

Eighty-eight years after this agreement the confederation passed through a crisis which threatened its very existence. The danger in this case came from within instead of without. Discord among the states had been increasing for some time, for it was plainly to be seen that the interests

¹ Dändliker, "Gesch. d. Schweiz," I., p. 560. Same, I., p. 594: "The Confederation which in the 19th century established the Convention of Geneva for the protection of the wounded, had already in the 14th century, for the first time in the history of the world, mitigated the barbarity of war."

GOVERNMENT IN SWITZERLAND

of the cities and the rural communities widely diverged.

The league had been formed on a basis of equality of states, but it could hardly fail, in course of time, that the cities, with their larger and more cultivated population, should exert a more commanding influence in the politics of the nation than the agricultural cantons, the boundaries of which were comparatively stationary while their inhabitants were less progressive. The moral weight was on the side of the cities, but the vote in the Federal Diet exhibited four rural states against three municipal, with Zug in a changeable position, as it was composed of both city and country. The policy of Schwyz, Uri, Unterwalden, and Glarus had degenerated into chronic opposition to the desires of Zürich, Bern, and Luzern. The Forest States regarded themselves as the founders of the League and still the centre of its life. They were jealous of the increasing power of the towns, their wealth and evident influence with foreign nations. They apprehended also danger to their hard-bought freedom, should the aristocratic cities gain the upper hand. The municipalities had, indeed, given cause for suspicions of this kind, since in the government of their territories they made distinctions between citizens within and without the walls, much to the disadvantage of the latter, and in general held their rural subjects in invidious subordination. The Forest States had no desire to become appendages of the rich, aristocratic, and

ORIGINS OF THE COMMONWEALTH

sometimes unscrupulous governments of Bern, Luzern, or Zürich. The cities, moreover, had appeared to reap most of the advantage from the confederate wars. Their territories had grown larger by annexation, while the enclosed central states were obliged to retain the same areas. Especially in the war with Charles the Bold, Bern had gained greatly in extent on the west, while the immense booty taken in battle and the tributes laid on conquered cities seemed to the country cantons to be unfairly divided, since all were supposed to receive an equal share. The cities protested that it was no fair division of booty to give each one of the country states, which had all together furnished 14,000 men for the war, an even share with Bern which had sent out 40,000. Another bone of contention was the enlargement of the union. The cities had for a long time desired to bring the cantons of Freiburg and Solothurn into the league. This was a step recommended by policy as well as by friendship, for by this means the borders of the confederation would have been rounded out to limits much better fortified by nature, not to mention the numerical increase in military forces. But these were municipal governments, and the Forest States, unwilling to add more to the voting strength of the cities and thereby place themselves in the minority, refused again and again to admit these cantons.

The situation daily grew more critical. Schwyz, Uri, and Unterwalden made an agreement with

GOVERNMENT IN SWITZERLAND

Glarus to stand by each other in case of attack. Luzern, Bern, and Zürich made a compact of mutual citizenship, a form of agreement by which they sought to circumvent the oath they had taken in the League of Eight to enter into no new alliances.

Just at this point there was alleged to have been discovered a plot to destroy the city of Luzern by countrymen of Obwalden and Entlibuch. The cities were thrown into a frenzy, and peace was strained to the utmost. Threats and recriminations passed from side to side, but finally, as an almost hopeless effort toward reconciliation, a Diet was called to meet at Stanz on the eighth day of December, 1481.

The details of this conference read like romance, so great was the transformation which took place in the feelings of the confederates. Strife and contention were turned to patriotic affection. Over the causes of this sudden change of sentiment much controversy has arisen. Whether it was the moral influence of the hermit Nicolas von der Flüe or the statesmanship of Burgomaster Waldmann which brought it about, is difficult to decide, but just as the Diet was about to break up in confusion a compromise was effected, and an agreement was drawn up which is known as the Convention of Stanz (*Stanzerverkommniss*). In this convention the agreements of the Perpetual League, the *Pfaffenbrief*, and of the *Scmpacher Brief* are reaffirmed and the new separate alli-

ORIGINS OF THE COMMONWEALTH

ances abolished. As to the matter latest in contention, it was agreed that movable booty should be divided according to the number of men sent into war, but new acquisitions of territory should be shared equally among the states participating. Thus the principle of state-rights was preserved and the idea of popular representation received its first, and for three hundred years almost its only recognition. In another agreement, made the same day, Freiburg and Solothurn were admitted to the League on equal terms with the others.¹

In 1501 the confederation was enlarged by the admission of Basel, which, on account of its situation and importance, was a most desirable acquisition, and in the same year the addition of Schaffhausen, like Basel a free imperial city with outlying territories, still further strengthened the union.

The next, and for two hundred and eighty-five years the last, addition to the inner membership of the alliance, was Appenzell. This canton had often sought admission, but had hitherto been refused on account of the warlike disposition of the people and their liability to get into trouble without sufficient cause. Indeed, all three of these new states were placed in a subordinate position, as may be seen from the fact that they were enjoined from making new alliances or beginning war without the consent of the other confederates. For Basel and Schaffhausen the peculiar arrange-

¹ "Eidgen. Abschiede," I., p. 696. Oechsli, p. 203.

GOVERNMENT IN SWITZERLAND

ment was made that in case strife should arise between other members of the League, they were to endeavor to mediate peaceably, but failing in this they were to stand by, let them fight it out and aid neither party.

Connected with the confederacy there were, for varying periods and in different relationships, other territories and cities more or less under its control. One class consisted of the so-called Allied Districts (*Zugewandte und Verbündete Orte*), which were attached to the central body not as equal members, but as friends for mutual assistance. This form of alliance began almost with the formation of the league, and gradually extended till it included St. Gallen, Biel, Neuchâtel, the Bishopric of Basel (which territory lay outside the city), the separate confederacies of Graubünden and Valais, Geneva and several free imperial cities of Germany, at one time so distant as Strassburg.

More closely attached to the confederation were the *Gemeine Vogteien*, or subject territories, whose government was administered by various members of the league in partnership. These lands had been obtained partly by purchase or forfeiture of loans and partly by conquest. The desire for enlargement of territory began early in the history of the cantons, and all of them added individually or in partnership to the extent of their possessions. But in the fifteenth century this ambition seized upon the confederation itself. Previously to the battle of Sempach the struggles of the Swiss had

ORIGINS OF THE COMMONWEALTH

been to defend their rights and hereditary privileges. After that decisive occasion their aims were toward increase of power, and while the cantons had generally enlarged their borders by purchase, the confederation as a rule made use of force. Thus in 1410 seven states joined in the subjugation of Eschenthal, an Italian possession beyond the Gotthardt. Aargau and Thurgau were seized during family quarrels in the house of Austria. In the latter territory the inhabitants desired admission to full membership in the league, but the confederates had become so greedy of spoils that they would not forego the advantages of the offices and revenues. They were democrats at home but not abroad, so Thurgau remained in a condition of subjection until 1798.

By various means and under differing conditions other districts were brought under the rule of the league during the next few years, so that before the middle of the sixteenth century nearly all the territory now included in Switzerland was in some way connected with the confederation.

Upon this territorial basis of states, subject lands and allies, the fabric of government stood till the close of the eighteenth century. It was a loose confederation, whose sole organ of common action was a Diet in which each state was entitled to one vote. During the infancy of the league the machinery of federal government was simple indeed. Whenever anything needed to be done in concert, the canton to which the matter first occurred called

GOVERNMENT IN SWITZERLAND

a Diet; delegates were appointed, and these, upon assembling, acted according to the instructions of their home governments. If disagreement arose between two cantons, each appointed referees, and if these were unable to agree, a third was chosen by the other two, and his opinion prevailed. Such were the beginnings of the Swiss Federal Tribunal. In war each canton furnished and maintained its own soldiers, unless the campaign was undertaken for the special benefit of a single state; then the canton which called in aid maintained the forces while within its own boundaries.

The formal bond of union was for five hundred years hardly more than this. In later times the Diet assumed more of the duties of the primitive arbitration committees, and was recognized more as a central organ of communication, yet the written articles of confederation were but slightly different from the early beginnings. The *actual* bond of union, however, owing to the pressure of circumstances, was stronger than written agreements. Until the Reformation had introduced religious schism between the states, the presence of powerful enemies on every hand kept fresh the sense of mutual dependence, and the Swiss Confederation rose above the letter of its constitution; but when it had passed through the struggle for existence, the principle of state-rights found no impediment in its way and the weakness of the central government became sadly apparent.

The Diet, which at the height of its power had

ORIGINS OF THE COMMONWEALTH

no means of enforcing its own decrees, was even for a time during the Reformation split into Catholic and Evangelical parts which acted separately. When united again, the feeble powers which had been formerly exerted rapidly faded away. The acts of the Diet were in no sense legislative, but rather recommendations to the several states, for, though the resolutions there passed may have had the form of law, they were obeyed only when it suited the individual cantons. The military affairs of the country reached a deplorable condition, notwithstanding numerous attempts to provide for a uniform system of national defence. Jealousy and indifference broke down all efforts to strengthen the central government, and the country was open to the first invader.

The situation was similar to that of the United States under the old confederation after the war of independence was over, except that, on account of religious differences, the disintegration of interests was even more marked in Switzerland than in America. Had the United States continued under that form of government for a century, or even a generation longer, their political condition would doubtless have been as bad.

Almost the only thread that held the Swiss Confederation together was the possession of the subject lands. In these they were interested as partners in a business corporation. Here were revenues and offices to watch and profits to divide, and matters came to such a pass that almost the

GOVERNMENT IN SWITZERLAND

only questions upon which the Diet could act in concert were the inspection of accounts and other business connected with the subject territories. On several occasions these common properties were all that prevented a complete rupture of the union.

Another marked feature in the condition of government was the supremacy maintained by the patrician element. Municipalities gained the upper hand over rural districts, and within the municipalities the old families assumed more and more privileges in government, in society, and in trade. The civil service in some instances became the monopoly of a limited number of families, and these were careful to perpetuate all their privileges. Even in the rural democracies there was more or less of this family supremacy visible. Sporadic attempts at reform were rigorously suppressed in the cities, and government became more and more petrified.

A study of this period of Swiss history explains many of the curious provisions found in the constitutions of to-day, which seem like needless precautions against family influence. But the evils of privilege were especially grievous, and the fear of them survived when the modern constitutions were made.

THE HELVETIC REPUBLIC

The Swiss aristocracies were particularly obnoxious to the revolutionists of France, and these

ORIGINS OF THE COMMONWEALTH

patriots, after they had sufficiently cured the evils of human society in their own country, determined to rectify the political affairs of Switzerland according to their views of the rights of man. The army of the Directory was charged with the propagation of the new doctrine, and the Swiss were obliged by force to receive a new form of government at their hands.

A more complete change in the political character of Switzerland than that introduced by "La République Helvétique" in 1798 could hardly have been imagined. Where had been a *Staatenbund* of the frailest kind was erected in a day a unitary state with central government. What had been independent sovereign states now became departments only of a larger unit, or, in some cases, several were thrown together to make a single department. Bern, the largest and most aristocratic, was divided into four, and havoc generally was played with existing institutions. In introducing the new doctrines these political missionaries found it convenient to empty out the rich treasuries which various states had accumulated against a time of war.

By way of contrast, one act of justice removed the subject territories from their subordinate position and erected them into independent cantons.

The central legislature consisted of a Grand Council of representatives elected from the cantons according to population, and a Senate of four delegates from each canton, to whom were to be

GOVERNMENT IN SWITZERLAND

added from time to time the retiring members of the Directory. Senate and Council together elected the Executive Directory of five members. These in turn appointed four ministers for different departments of administration, and these nine together wielded the executive power of the state.

Local administration was carried out by prefects in the cantons, sub-prefects in the districts, and agents in the communes. These offices were hitherto unknown in Switzerland, and their connection with each other and the central power formed a distinct innovation.

Such radical changes and such reckless disregard of past conditions could hardly be expected to find cordial acceptance. Discontent was held in check for nearly five years by French bayonets, but the Helvetic Republic was finally driven across the border before a storm of reactionary indignation. This had been a period of visionary experiment in government, and political abuses had exasperated the Swiss beyond endurance, but the educating influence of that short experience in centralized government must not be left out of account. Many of the most patriotic minds were enthusiastic for greater unity, and endeavored to direct their country toward higher ideals of politics and social welfare. Under the Helvetic Republic many things were begun which have only in these later years again become established, but so rudely was the matter thrust upon the people at the time,

ORIGINS OF THE COMMONWEALTH

and so greedy were the saviours who came to their rescue, that reaction was inevitable.

THE ACT OF MEDIATION

Napoleon Bonaparte, however much he may have desired to make Switzerland an appendage of France and to use her military forces as his own, appreciated the historical fitness of things and the political instincts of the mountaineers. He gave them a constitution in his Act of Mediation of 1803 which restored autonomy to the cantons, but still retained a central government. It was, indeed, a restoration of the confederation in a form which suited the times,¹ but it was not a restoration of old conditions in the cantons. The Act of Mediation contains a federal constitution, but the first nineteen chapters outline the fundamental law of as many states. To some of them democratic, to others representative governments were given. To Uri, Schwyz, Unterwalden, Zug, Glarus, Appenzell, and Graubünden, the old popular assembly, the folkmote, or *Landesgemeinde* and council were restored, as better suited to the inclinations and habits of those states.

The distinctions and privileges of the patrician municipalities which had been overthrown by the Helvetic Republic, were still held in check, and despite the reactionary efforts of the original thirteen states, the former subject territories retained

¹ Bluntschli, "Schweiz. Bundesrecht," I., 460.

GOVERNMENT IN SWITZERLAND

their newly acquired sovereign rights. The national legislature was made again into a Diet, but regard was paid to population by giving two votes to those states which had 100,000 inhabitants or more. Six of the most important cantons, Freiburg, Bern, Solothurn, Basel, Zürich, and Luzern were appointed *Vororte*, or chief states, to take turns at the head of affairs for one year at a time. During that year the capital of the *Vorort* became the seat of the Diet, and the chief magistrate became *ex officio* the president of the confederation, with the title *Landammann* of Switzerland.

For a period of eleven years government proceeded under these forms, but the moving spirit was all the while the man of destiny at Paris. Switzerland was not only allied with France but controlled by her. A contingent of 16,000¹ Swiss must constantly be kept in the armies of Napoleon, and in all external relations Switzerland was treated as part of France. Bits of territory were torn off at Bonaparte's convenience and given to this power or that, as occasion suggested. The laws of commerce and industry were regulated to suit the financial policy of France, and protest was met with threats or harsh measures.

The fall of Napoleon brought with it the destruction of his governmental experiments in the Alps. At the first crash every ancient privilege leaped forth to claim its own as it had been before the advent of the French. Bern demanded the

¹ In 1812 reduced to 12,000.

ORIGINS OF THE COMMONWEALTH

provinces of which it had been shorn; the democracies wished again to be the owners of other democracies; and reactionaries in general believed their time had come. But they were not destined to see their wishes fulfilled, for even the reactionary European powers, assembled at the Congress of Vienna, would not go so far as many Swiss desired in reëstablishing ante-revolutionary conditions. While the latter were endeavoring to come to some agreement among themselves as to the general principles of a new constitution, and were succeeding only in splitting into two conventions in which the eight old cantons stood out against the rest, the powers allowed it to be distinctly understood that the newly made states must be received on an equality with the others. Seeing that further efforts to bring back the old conditions of servitude would be futile, the ultra-reactionary cantons joined the more moderate in forming the Pact of 1815, which, sanctioned by the Vienna Congress, became the federal constitution for the next three decades. Geneva, Valais, and Neuchâtel were admitted to membership in the confederation, which from then on was composed of twenty-two states.

THE PACT OF 1815

In most respects the interval between 1815 and 1830 was a period of stagnation; from other stand-points it was a season of convalescence. Central government went back to the previous century.

GOVERNMENT IN SWITZERLAND

The highest power was again vested in a Diet of ambassadors from each canton, voting according to the instructions of their governments. There may have been several delegates, but there was only one vote for each state. This Diet, however, in distinction from some of its predecessors, might declare war or peace by consent of three-fourths of the cantons, and decided by majority vote such other matters as came within its competence. Treaties of commerce, for instance, might be agreed to by the Diet, but, on the other hand, the cantons individually might also enter into agreement with foreign governments, even to the extent of military capitulations. The fatal weakness of the whole constitutional framework lay in the inability of the Diet to enforce its own decrees.

The Pact of 1815 was a reactionary triumph which delayed for nearly half a century the development of the country. Little trace of the radical theories of the French Revolution found a lodgement at this time in Swiss institutions. Religious liberty, the right of assembly, the freedom of the press, were passed over in silence, abandoned to the idiosyncrasies of the cantons.

The privileged classes again obtained their ascendancy, though not to the extent which prevailed before the Helvetic Republic. There was general peace in Europe, and the states, not being called upon to unite against foreign danger, were left to work out their own problems in their own fashions with the least possible interference from a central

ORIGINS OF THE COMMONWEALTH

power. These problems were solved universally in a spirit of reaction, yet there was always a small but enlightened minority struggling for better things. The effects of these efforts were first felt in the politics of the states themselves. As the French Revolution of 1793 found its echo in Switzerland, so the July Revolution of 1830 was reflected in the same region, but in this case it affected first, not federal government, but the constitutions of the more advanced cantons. A cry went up for more popular representation in legislature and administration, and it was along these lines that advancement was made from time to time, until the old federal system became more and more unfitted for the new conditions.

Economic questions also played a part in bringing about political changes. The rapid advancement of manufactures, means of communication, and transportation called for more enlightened treatment of political and social problems. The weaknesses of the old confederation were in a manner patched up by agreements, or treaties, between the states. Concordats, as they were called, touching validity of marriage, the laws of commerce, weights and measures, and other matters, were established among as many states as cared to join, but these were insufficient to cover the nakedness and impotence of the central government. Beside the growing and aspiring political institutions of the states the confederation became an anachronism too evident to deny.

GOVERNMENT IN SWITZERLAND

The Diet itself in 1830 resigned any powers of interference it might have used to assist or hinder the progress of constitutional reform, by passing a resolution to the effect that "every state in the confederation by virtue of its sovereignty was free to undertake any changes in its constitution which seemed desirable, so long as these changes were not in opposition to the articles of union, and that the Diet would not interfere in any way with the constitutional reforms already effected, or any that might be undertaken in the future."

This permitted, indeed, the free movement of reform, but took away at the same time the guaranty of safety which members of a league might expect from a central government.

The Diet was requested to guarantee the new constitutions in several states, but, in view of its own weakness in the past, refused. Hence seven cantons, Luzern, Zürich, Bern, Solothurn, St. Gallen, Aargau, and Thurgau, all of which were of progressive, if not of radical tendencies, joined in an agreement for mutual protection. This so-called *Siebner-concordat* provided that when strife arose in any of these states concerning infractions of the constitution, the others should act as arbitrators, and, if necessary, give protection by force of arms.

At this day we can easily see how great a mistake it was on the part of the liberal party to abandon, even to this extent, the ideal of a united country. Doubtless it appeared that the consoli-

ORIGINS OF THE COMMONWEALTH

dation of progressive states would tend to spread reconstruction till reformers should be in the majority. The result was quite otherwise. Very soon a conservative league, known as the *Sarnerbund*, was entered into by Uri, Schwyz, Unterwalden, Basel-city, Neuchâtel, and Valais. On one side were thus arrayed moderate liberals and radicals, and on the other conservatives and immovables of the old confederation. But, if the party of progress made a mistake in combining into a league which was in such doubtful accord with the bond of union, the *Sarnerbund* made a greater in withdrawing from the Federal Diet and meeting in a separate convention. The seceding states announced that they would not send representatives to the general congress so long as the delegates from certain parts of Basel and Schwyz, which had revolted from their home governments, should be recognized. Meanwhile, a revised federal constitution, which, by strengthening the central government, offered some improvement upon the Pact of 1815, was submitted to vote in the cantons, but, satisfying neither the advanced liberals nor the conservatives, failed of adoption (1832). Encouraged by this action, the authorities of Basel and Schwyz endeavored to coerce their refractory parts into obedience by military measures. This roused at last the federal government, which placed twenty thousand men under arms, enforced the recognition of the two parts of canton Basel, dissolved the *Sarnerbund*, and compelled the

GOVERNMENT IN SWITZERLAND

states composing it to send delegates to the Diet (1833).

It required, however, one more great national peril to bring about the introduction of a federal constitution. Secession again came so near being successful that the construction of a strong central government could no longer be put off. In 1846 a new *Sonderbund* came to light, but the lines of demarkation were different from those of its predecessors. The former were based upon political theories and practices; in the latter the questions at issue were almost entirely religious, and separated states which had previously been in league. Many things had occurred during the previous decade to engender bad feeling between the Catholic and Protestant confessions, though at first the boundary lines of states had not been crossed in any of the controversies. The advanced radicalism exhibited in some parts had brought about a strong reaction in other states, a reaction which in a number of the Catholic cantons demanded the placing of Jesuits at the head of educational affairs. Luzern was one of the most fiercely conservative of all, and provoked the ill-feeling of the reform party to such an extent that the canton was even invaded by volunteer military companies coming to the aid of the small minority of agitators within. But these *Freischaren* were too incoherent to effect anything more than an increase of bad feeling and to give a partial excuse for secession.

This *Sonderbund* was for three years kept secret,

ORIGINS OF THE COMMONWEALTH

but in 1846 the gravity of the breach which it made in the federal constitution became known. Agreements between states on matters concerning themselves were permissible, but a political and military organization such as this was too great for even the union of 1815 to bear. Luzern, Uri, Schwyz, Unterwalden, Zug, Freiburg, and Valais were found prepared for practical rebellion against the remainder of the confederation. The Diet, by a close vote, demanded the dissolution of the *Sonderbund*, and 80,000 troops were put in motion. In a vigorous campaign of eighteen days the rebellion was broken and the authority of the confederation restored.

THE NEW CONFEDERATION

Revision of the constitution could no longer be delayed. The Diet went busily to work upon a new project, and on September 12, 1848, the organic law which at the present day forms the foundation of the confederation was adopted by a large majority of the Swiss people. Amendments have been made from time to time, especially in 1874, but these have been enlargements of powers already existing, and adaptations of inherent principles to the advances of time.

Switzerland obtained its federal government sixty years later than the United States, but had five centuries of prejudice to overcome. During that long period the great aim and end of all political strife was local independence, and, con-

GOVERNMENT IN SWITZERLAND

sidering the race origin of the people, their national instincts, national experiences, and political education, it is no wonder that the phrase "sovereign state" should be conspicuous in the constitution. All the elevating memories of the national history, all the inspiring traditions which had been bred into national sentiment generation after generation, were connected with a league of states of almost insulated independence. The darker periods, when fraternal feeling lost its hold and when disunion received its just reward, were dominated by motives, religious, ambitious, or pecuniary, which are so deeply wrought into human nature that isolation, once engendered, easily perpetuated itself, grew deeper, and fastened itself into the national habit of thought.

Then, when solidarity was first offered, the form of it was so historically crude and so rudely forced upon the country, that, although common misery broke down many old prejudices, love for unity could hardly come out of it. Yet local independence has been a vital element in the evolution of the Swiss nation. By confederation this people became strong, but, after all, the motive of union, the mainspring of political combination, was desire for local independence. Without this the Swiss republic would not have existed. At the beginning there would have been nothing else to fight for. Later on there would have been no reasons for wider combinations, and, though freedom was at times abused, the Swiss people, as they look

ORIGINS OF THE COMMONWEALTH

back over the history of their neighbors who fell under the power of dynasties, may be thankful that individuality was maintained.

The value of unity has been learned by hard experience, but through it all a vigorous local self-reliance has been cultivated, than which there is no surer foundation for safe political activity in larger fields.¹

¹The author, in another essay, has endeavored to explain by itself the origin and continuity of the state-rights idea. See "A Study in Swiss History," "Papers of the American Historical Association," Vol. III., pp. 146-164.

CHAPTER II

THE CONFEDERATION AND THE CANTONS

THE Swiss Confederation is composed of twenty-two states which differ widely in area and population. Three of these are divided into "half-cantons," as they are called, so that altogether there are twenty-five cantonal governments within the confines of the territory.

So far as local government is concerned the half-canton is an independent state, but in federal affairs it has only one-half the power of other cantons. Thus Inner Appenzell has one federal senator and Outer Appenzell another, while Glarus has two. This singular condition of things dates in some cases from primitive times. The division of Appenzell occurred after the Reformation, when the Catholics, in order to maintain their worship in peace, withdrew into one part of the canton and the Protestants took another. In Basel, disputes between city and country caused a rupture in government. The rural population organized its own state but maintained the ancient name. This method settled difficulties by scission instead of secession.

CONFEDERATION AND THE CANTONS

In extent the cantons¹ vary from 2765 square miles for the largest, down to 14 square miles for the smallest, and in population from 542,000 to 13,000, though territory and population do not vary according to the same scale, since some of the smaller states contain comparatively more people. Altogether the Confederation covers about 16,000 square miles of territory, the habitable part of which is about as large as the states of Massachusetts, Connecticut, and Rhode Island combined, and contains about three millions of people.²

Differences in the physical character of the various parts of the country are also very marked, causing differences of occupation to the inhabitants, variations in personal characteristics, and leading, especially in early times, to different ideas of government and society. Differences in language also, dating from the settlement of Helvetia after the fall of Rome, and perpetuated by the natural divisions of the country, have emphasized these various political instincts and given to the institu-

¹ The words "canton" and "state" are often used here interchangeably. To an American reader it is perfectly clear that the canton is equivalent to the subdivision of the United States which he calls Ohio, or Wisconsin. But to avoid ambiguity or confusion with "state" as a general term for organized society, the word canton is more frequently applied to the constituent parts of the Swiss Confederation.

² Estimate of the Federal Statistical Bureau for 1897, 3,082,989. ("Statis., Jahrb." 1898.) The census was last taken in 1888. The next occurs in 1900.

GOVERNMENT IN SWITZERLAND

tions of Switzerland an unusual diversity, which, though now disappearing under the influence of rapid communication, adds interest as well as difficulty to the study of its history.

Thus we observed at the beginning that the original struggle for freedom and the primitive confederation began in the secluded valleys of the high Alps. To-day we find in the same valleys the original ideas of government and the institutions of the fourteenth century best preserved. In the more open country, accessible to the march of commerce and of outside civilization, institutions have taken on forms determined by the necessities of larger life, and have fluctuated to a greater degree than in the mountain districts. A greater tenacity also in religious opinion has been exhibited in the remote highlands, and in general a stronger spirit of conservatism.

Language and race also play their parts. It was stated at the outset that the history of Swiss institutions was essentially a study of Germanic political ideas. This was unquestionably true so long as states of other languages held subordinate places in the confederation, but, now that French and Italian cantons are represented in the deliberations of the union on a proportional basis, the influences of Romance thought must be reckoned with the rest. The problem of language is not, as in the United States, a question of more or less rapid amalgamation.¹ The three tongues have

¹ Except for a small body of people in Graubünden, who speak

CONFEDERATION AND THE CANTONS

existed side by side for centuries, and their individuality is recognized in the federal constitution by providing that laws shall be printed in all of them, and that in the distribution of certain offices regard shall be paid to the language of the people for whose benefit the official serves. At present the proportion of the population speaking German is about 71 per cent, against 21 per cent French and 5 per cent Italian. In spite of all theories these three nationalities have lived side by side, not only in harmony, but in active coöperation. The confines of the union do not even follow the natural configuration of the country. Ticino is separated from the rest by a lofty mountain-chain, and Schaffhausen by the waters of the Rhine; yet no region can be said to be more patriotic than the others, and none desires to be separated from the confederation.

These considerations might be referred to the domain of local institutions and antiquarian research, were it not for the fact that in these modern days each locality has an opportunity to exert its influence upon general concerns. By means of the federal legislature and the direct popular vote upon the work of that body, the political education and natural instincts of all sides will not fail to be felt, and in estimating popular action upon any given problem all the conditions must be considered.

"Ladinisch" or "Romansch," which is giving way before the German.

GOVERNMENT IN SWITZERLAND

As indicated by the name, the form of government which binds these diverse elements together is not that of a unitary state in which the cantons serve as administrative divisions, like the departments of France, but it is a federal state, in which certain powers are delegated to a central government while the rest are exercised by the individual parts. In this it resembles the United States of America, but with certain minor differences which will appear as we proceed.

The cantonal constitutions, and the federal as well, declare with one accord that "the cantons are sovereign in so far as their sovereignty is not limited by the federal constitution, and, as such, exercise all rights which are not delegated¹ to the federal power." They might be more strictly defined as autonomous states, united, for purposes common to all, in a central government; the sovereignty residing in the people as a whole, but finding two modes of expression, one for local, the other for general affairs.

They were formerly sovereign states and lived under a league like so many foreign powers, but when they joined in 1848 in forming a federal compact, they came, like the United States in 1789, into a new state which seemed but a natural growth from the old, but which eluded precise

¹ The words "expressly delegated" were used in Napoleon's constitution of 1803 (Act of Mediation, chap. 20, sec. 12), but, like the framers of the American federal compact, the Swiss of 1848 rejected that limitation.

CONFEDERATION AND THE CANTONS

definition. As in America, the consciousness of solidarity has been a matter of slow development, even after the forms of constitutional unity had been accepted.

The line of demarkation between the functions of state and nation is not so strictly defined in Switzerland as in America. In the United States the powers given to the federal government are wielded by it exclusively, but in Switzerland it will be seen that the cantons, in some cases, join hands with the central government in administering general laws. Such is the case in the organization and maintenance of the army. Cantons are also allowed to make treaties with foreign governments on minor matters, whereas in the United States the federal government is the only treaty-making power. Differences will be noted in other departments of the state, but a tendency toward centralization is distinctly visible in the history of administration since 1848. In fact, whole fields of legislation which were not thought of at the formation of the constitution have been almost by necessity given over to the central power.

On the other hand, curious combinations of administrative duties have been established. In the management of the military exemption tax, all the work of assessment and collection is performed and paid for by the authorities of the cantons, while they turn over to the federal government one-half of the gross receipts. The administration of the alcohol monopoly, on the

GOVERNMENT IN SWITZERLAND

contrary, is controlled exclusively by federal law and federal officials, and every franc of net income is paid over to the cantonal governments.

The foremost point of contact between confederation and canton will be found in the guaranty by which the former upholds for each state its territory, its sovereignty, the rights and privileges of its people and citizens, and the rights which its people have delegated to its authorities. The federal government of the United States simply guarantees to each state a republican form of government, with no mention of its name, size, or boundaries, but in the Swiss constitution the cantons are all enumerated by name as the twenty-two sovereignties which compose the confederation. The result is that no enlargement can be made, either by addition from without or by subdivision within, without an amendment to the constitution, or, in other words, by general consent. In case a foreign state threatens to deprive a canton of part of its land, resistance becomes a federal matter. The question as to whether new members should be taken into the confederation did not, at the time of the formation of the constitution, depend on the development of large unreclaimed territories in the vicinity of the states, but had been practically settled long before by the events of history and the divisions of nationality.

Again, when cantons revise their constitutions they must submit the amendment or revision to the inspection of the central government, and if

CONFEDERATION AND THE CANTONS

the two houses of the Federal Assembly agree that nothing therein contravenes the federal constitution, then, and not before, can the act take effect. If there are defects of this kind in the instrument, they are pointed out in the legislative report, and the result is that, even if the canton does not expunge the objectionable clauses at once, they are regarded as void. Comments are also sometimes added by the federal authorities, respecting doubtful clauses, to the effect that they must not be interpreted to mean this or that, thus forestalling a possible future infringement upon the federal constitution.

The control over state government in this matter is thus made much more direct than in the United States, where the federal power, through its Supreme Court, exercises an indirect right of veto on state constitutions, but, instead of pronouncing in advance, waits until some person has suffered and a concrete case at law comes before it. This method is in the end as effective, but tardier and more circuitous. In both cases, however, this control is not the arbitrary interference of a central administration, but is based on a contract to which all originally agreed. The cantonal constitutions must themselves assure to their citizens the exercise of political rights according to a republican form of government, either representative or democratic, and must be subject to revision whenever a majority of citizens demand. Consequently a similarity of institutions is provided, but with

GOVERNMENT IN SWITZERLAND

wide scope for individuality in local government. It would not be possible for any state to erect itself into a principality, nor to exclude a large number of its citizens from the exercise of political rights, without evoking the interference of the federal government.

In order to make its own guaranty effective, the central power must have a monopoly of the affections of its constituent parts. Hence every other political alliance between the cantons is forbidden. They may make agreements on matters of administration or internal legislation of common interest not contrary to the general constitution, but nothing like treaties of offence and defence can be tolerated. Such provisions might well be expected in the constitution of Switzerland. Nothing is more glaring in the history of that country than the evil of separate alliances. Ever since the time when cities were first joined to a confederation of rural cantons there has been a tendency to combine into separate leagues. The religious animosities which rose out of the Reformation strengthened these centrifugal forces, till finally the secession of 1848 brought the country to the verge of ruin. Aroused by the danger so narrowly escaped, the Swiss at once formed a central government worthy of the name, and settled once for all the question of separate alliances of states.

As to dangers from internal disturbance, either between the individual cantons or from insurrection within a state, the federal government has

CONFEDERATION AND THE CANTONS

a certain power of intervention. The canton threatened shall at once advise the Federal Council of its predicament, and the latter shall take such measures as it finds necessary, or convoke the Federal Assembly. In case the cantonal government is not in condition to invoke aid, the federal authority may intervene without a requisition, especially when such a disturbance compromises the safety of the country.

But occasions for forcible interference are in a measure forestalled by the agreement of the states not to rush into conflict hastily. "The cantons are bound, if strife arises between them, to withhold themselves from the taking up of arms or any measures of self-help, and to submit to the federal decision."¹

The extent to which the confederation may intervene in the affairs of a state without a requisition from the latter has never been fully defined. Neither laws nor precedents have established rules upon the subject, but recent events in Canton Ticino have shown tendencies which will doubtless fix the practice of the future.

The "Ticino Question," which has been before the public at least since 1876, started with a constitutional conflict. The cantonal constitution, dating from 1830, divided the state into election districts, and provided that three representatives should be elected to the cantonal legislature from each district, irrespective of the number of inhabit-

¹ Fed. Const., Art. 14.

GOVERNMENT IN SWITZERLAND

ants. The Federal Assembly declared this to be contrary to the spirit of the national constitution, and ordered that representation according to population be observed.

Another cause of trouble was the custom of allowing Ticinese natives to maintain a right of domicile in the canton while living elsewhere, and to return at indefinite times to take part in elections. Various federal decrees and decisions from 1876 down to 1888 endeavored to fix rules for persons who desired to retain their voting privileges in Ticino, all tending to stop double citizenship, but meeting with only partial success.

Insurrection broke out at various times, notably in 1889, and again in October–November 1890, and federal troops were called out to suppress disorders. These affairs were in every case ebullitions of state politics, and the cantonal authorities affected to ignore the national government because the disputes were not between separate states. But the Federal Council, with the approval of the Assembly, maintained its right to intervene, and after restoring order instituted inquiries by means of federal commissioners.

From these examples at least two important ideas are to be gathered: The first, that the national government feels called upon to subdue insurrection and maintain the legal authorities in any canton without waiting for a summons from the latter; the second, that the central authority is competent to inquire into the validity of an election,

CONFEDERATION AND THE CANTONS

not only for members of the National Assembly, but also for delegates to the cantonal legislature. It does so on the supposition that this pertains to that guaranty of personal rights and political freedom enjoined by the federal constitution, and, though this interpretation does not meet with universal approval, such acts of the Federal Council have been sustained by the representatives of the people assembled in the national legislature.¹

With these brief illustrations of the connection between the confederation and its parts, we may proceed to a consideration of government in the cantons.

¹ G. Vogt, "Zur Tessiner Frage: Rechtserörterungen," 1889. Hilty, "Polit. Jahrbuch," 1889, p. 579, etc.; 1890, p. 794, etc.

CHAPTER III

CANTONAL LEGISLATION

As already indicated, the functions of government are divided between the confederation and the cantons in a manner similar to that prevailing in the United States. The federal power in Switzerland has, in some directions, greater scope than in America, yet there remains in both cases a large body of interests affecting the individual and the community, which are regulated by the various states in different ways, according to their differences in temperament, in language, and historical development.

These differences were formerly more marked than at present. The original physical barriers between the different sections of the country were increased by artificial partitions built of jealousy and distrust; but modern methods of communication, the development of trade and industry, and the successful establishment of a central government have caused the idiosyncrasies of locality largely to disappear. States have in later days been more willing to try one another's experiments, and, as in the case of the *Referendum*, certain institutions or methods have passed from one to

CANTONAL LEGISLATION

the other until, in those respects, nearly all are alike.

Yet, with all the tendencies to uniformity, there still exist many diversities of detail, explained only by their own history, and worthy to be studied for their problems in political psychology. Every region, every hamlet, has its peculiarities, but, in order to keep in view state government as a whole, only the outlines of variation will here be indicated.

The states, when classified according to their forms of government, may be broadly divided into Democratic and Representative, or, if we leave out of consideration for the present the popular vote on the adoption of laws, there are states where the laws are made by the people assembled together in person, and others where this is done by delegates elected by the people to act in their stead. According to this division there are six governments in which the purely democratic or folk-mote system of legislation prevails, and nineteen in which delegated assemblies are more or less completely the sources of law.

If we examine into the real nature of the various governments, however, it will soon appear that this classification is not sufficiently exact; that the presence of an elective legislature does not necessarily make a state a representative government; and that, in fact, owing to the supervision assumed by voters over their law-makers, there are in Switzerland twenty-four democracies and only one republic. The only strictly representative govern-

GOVERNMENT IN SWITZERLAND

ment is that of Freiburg. All the others are democratic in various degrees, according to the amount of original work left to the discretion of the legislature.

The highest form of democracy is found in the town-meeting cantons, where all the citizens come in person to discuss and vote upon laws ; but this system is scarcely more democratic than the one employed, for instance, in Basel-Land, where the whole work of the legislature is at the close of each session submitted to popular vote. In some states only the more important laws are obliged to run the gauntlet of popular ballot, while in other governments it is optional to call them in question or not. Hence a more suitable arrangement is one which divides the states first into democracies and republics, and classifies the former according to the extent to which they employ either the Popular Assembly, the Obligatory Referendum, or the Optional Referendum.

THE LANDESGEMEINDE

Of all methods of law-making the folk-mote plan is the most picturesque. It has attracted the attention of many writers on account of its primitive quaintness, as well as its historical interest. But in some cases the impressiveness of the view has led the observer astray in his conceptions of the past and present of popular assemblies, and the *Landesgemeinde* in the hands of such has be-

CANTONAL LEGISLATION

come a fetich with which to conjure up original Germanic institutions.

If the Swiss popular assembly is a survival of the tribal council of Tacitus, it must have survived, like the buried rivers of Greece, in subterranean obscurity, for the first *Landesgemeinde*, definitely mentioned in the records, occurred some twelve centuries after the Roman historian's time, in 1294. This was a meeting of the inhabitants of Schwyz, for the purpose of making regulations for the sale of their common lands and for taxation.

In 1314 another folk-mote is mentioned, at which these Schwyzer determined after long debate to undertake a warlike expedition against the abbey of Einsiedeln. How frequently such meetings occurred, or how widespread the custom was among other clans we are not informed, yet it is evident that the folk-mote had already become an established institution, a recognized authority with regular modes of procedure. It must have been in operation for some time, but the date of its origin in Switzerland is as yet only a matter of speculation. As it emerges into history the *Landesgemeinde* is apparently an outgrowth of the feudal manorial court, or *Hofgericht*. The countrymen of the Alpine valleys assembled together at the call of the lord bailiff or deputy, to witness trials and to act as a popular jury upon disputes arising under the customary law of the region. They did not to any great extent legislate, they

GOVERNMENT IN SWITZERLAND

applied law; they did not elect the magistrate, they received him; as we see from the words of the First Perpetual League, where those who formed the compact did not revolt at the thought of judges being appointed for them, but against foreign judges, or such as had bought the place with a price.¹

Just when this assembly advanced to a fully self-governing body we may not positively determine, but we can understand how, having gained the point that only natives should be appointed magistrates, it would be an easy change, at some time when the feudal hand had weakened, to elect a man, instead of waiting for his appointment. As the political horizon grew larger, more of the functions of state would be assumed by the popular assembly, until it finally became supreme.

The changes which have taken place within what may be called the historical period, have been rather in the details than in the principles of popular government. Administration was obliged to conform to new and larger wants, but the final source of authority and the method of expressing its will have been the same. Not all the cantons which were originally governed by the folk-mote maintained it to the end. In the old League of Thirteen there were, after the Reformation, eleven *Landesgemeinden*; two each in Appenzell, Schwyz, Glarus, Unterwalden, and Uri, and one in Zug. Schwyz became too large and too boisterous to be

¹ See Appendix I.

CANTONAL LEGISLATION

governed by a mass-meeting, and, in 1798, fell before the advance of the Helvetic Republic. It was made a part of the new unitary state and never returned to the original form. At the same time perished the democracy of Gersau, which had been for five hundred years an independent community within the borders of Schwyz. Glarus Catholic and Glarus Protestant became united in 1836, and only a few years ago the separate assemblies of Uri were finally made one. Zug entered the list of representative governments in 1848, so that there are now but six states governed by *Landesgemeinde*. In their federal relations two of these are whole cantons and four are half-cantons.

The theoretical basis of folk-mote government is that the people in person ordain and establish all laws and regulations. This is not carried out to the letter, even in the most democratic cantons, for in all of them there are, beside the *Landesgemeinden*, representative councils which have some degree of legislative initiative, but the amount of discretion is practically so small that in a general consideration it can be ignored. As the people cannot personally administer the laws, they employ for the purpose a corps of more or less permanent officials; but they can enact their statutes simply by occasional departure from the ordinary business of life. This is done in Switzerland by stated meetings, ordinarily one a year, though extra sessions may be called in emergen-

GOVERNMENT IN SWITZERLAND

cies. The day set is a Sunday in April or May, and the place is usually some spot in the open air, long consecrated by convenience and usage to the assembling of the people.¹

In theory the *Landesgemeinde* consists of all male citizens who have reached their majority ; in practice it is composed of all who are able to be present. It differs from an ordinary mass-meeting in the respect that the voter not only expresses his political opinions, but instantly gives effect to them. The majority does not simply wish, or demand the passage of a measure, but enacts it at once, and the vote is a solemn legal proceeding. Hence the interest with which the foreign observer, who is accustomed to representative methods, beholds this act of sovereignty on the part of an assembly which includes all classes of people, poor and rich, the educated and the ignorant together.

The functions of the folk-mote are well stated in the constitution of Uri:² "Whatever the *Landesgemeinde* within the limits of its competence ordains, is law of the land and as such shall be obeyed ;" but this does not mean unlimited license to majorities. "The guiding principle of the *Landesgemeinde* shall be justice and the welfare of the fatherland, not wilfulness nor the power of the strongest."³

¹ In Uri, Boetzlingen an der Gand, near Altorf ; in Glarus, the village of Glarus ; in Obwalden, Sarnen ; in Nidwalden, Wyl an der Aa, near Stans ; in Appenzell Exterior, alternately at Trogen and Hundwyl ; in Appenzell Interior, the village of Appenzell.

² Art. 51.

³ Art. 50.

CANTONAL LEGISLATION

In detail the powers and duties of this body vary somewhat in different states, but usually cover the following subjects: partial as well as total revision of the constitution; enactment of all laws; imposition of direct taxes, incurrence of state debts, and alienation of public domains; the granting of public privileges; assumption of foreigners into state citizenship; establishment of new offices and the regulation of salaries; election of cantonal executive and judicial officers.¹ In no case does the *Landesgemeinde* act as court of justice. This will be noted as a wide variation from the folk-mote of Tacitus, which was accustomed to condemn criminals and cowards by popular vote.² The modern *concilium* leaves all such matters to the calmer consideration of the judiciary or executive. In brief, the *Landesgemeinde* is the source of all general law and is the highest supervisor of administration.

The method of procedure while in session is adapted to the necessities of a mass-meeting, and differs considerably from an ordinary legislative body. The presiding officer is the chief executive of the canton, the *Landammann*. Supported by the State Secretary, the Constable, and other officials, the President mounts a temporary tribune in the open air and finds before him the whole population of his dominion, men, women, and children, in holiday attire. Not all of these are voters, but

¹ Typical enumerations of powers are to be found in the constitutions of Uri, Art. 52, and Glarus, Art. 39.

² "Germania," Cap. 12.

GOVERNMENT IN SWITZERLAND

none are forbidden to come, though women and bystanders are expected to stand about the borders while their brothers legislate in the centre.¹

Formerly it was the custom for every voter to wear a sword, but now this is expected only of the presiding officials. Here and there may be seen perhaps a rusty family relic, more often carried under the arm, or strapped to an umbrella, than hanging at the side. Black clothing is apparently the only uniform required, if general usage may be called a requirement. The people are so well known to each other that it would be difficult for any one not entitled to the suffrage to act as a voter without detection.²

Some of the *Landesgemeinden* have retained more of their ancient customs than others. In Nidwalden, for instance, the *Weibel*, whom we may call state constable, or herald, is a most important personage. He is dressed in elaborate costume, and acts the part of grand master of ceremonies. At the opening of the assembly the *Landammann* demands of the people whether they wish to respond to the invitation of his government and to hold their *Landesgemeinde*. After a pause the *Weibel* gravely replies, "Most honorable *Land-*

¹ In Glarus, seats are provided directly in front of the tribune for the children, who are thus taught early to understand their political duties.

² There is occasionally complaint from some of the *Landesgemeinden* that the young men who are not yet voters forget that fact in the excitement of the occasion, and add their hands and voices to elections when not entitled to the privilege.

CANTONAL LEGISLATION

ammann, we desire to hold the *Landesgemeinde* according to ancient custom."

"Then let us begin by asking the blessing of God."

An act of worship, after different forms, is the beginning of proceedings in all of the popular assemblies, after which it is customary to listen to an address from the President.¹ This may be long or short, according to the amount of business on hand. The legislation which is to come up for adoption has already been put into shape for presentation, either by the executive council of the state or by that body which takes the place of a house of representatives.² It was formerly allowable in some cantons for any person to present a bill at the meeting, but now it is necessary in all of the states to submit such proposals first to the authorities.³ Here they are examined and reported upon to the *Landesgemeinde*, with comments.

In Glarus this programme is called the *Landesgemeinde Memorial*, and must be published at least four weeks before the assembly meets.⁴ To give opportunity for individuals and authorities to make proposals and offer bills, the official gazette announces every January that for fourteen days after

¹ The order is not exactly the same in all cantons.

² Here the resemblance to the *concilium* of Tacitus is real.

³ In Uri, before the last revision of the constitution, it was necessary for a bill to be requested by at least seven men of as many different families.

⁴ In some other cantons as few as ten days may intervene.

GOVERNMENT IN SWITZERLAND

a given date petitions may be presented for that purpose. These must be written, the object plainly stated, and accompanied by the reasons. All such motions are considered by what is called the Triple Council, or full legislature, and are classified as "expedient" or "inexpedient." A proposal receiving more than ten votes must be placed on the list as expedient, accompanied by the opinion of the council. The rejected are placed under a special rubric, familiarly called by the people the *Beiwagen*. The assembly may reverse the action of the council, if it chooses, and take a measure out of the "extra-coach," but consideration of it is in that case deferred until the next year.

In the larger assemblies debate is excluded, the vote being simply on rejection or adoption. In the smaller states the line is not so tightly drawn, the constitution of Uri providing that signers of petitions may orally explain their motions in person or by deputy. Votes are taken by show of hands, though secret ballot may be had if demanded, elections of officers following the same rule in this matter as legislation. Nominations for office, however, need not be sent in by petition, but may be offered by any one on the spot.

The proceedings are, on the whole, carried out with great dignity, although considerable good-humored amusement is often occasioned by the election of minor officers. The crowds are never turbulent, even where debate becomes at times exciting.

CANTONAL LEGISLATION

When we examine into the conditions under which folk-mote government is carried on in Switzerland, we find, in the first place, that it is the smaller rather than the larger states which employ that method. The list of the six cantons which are least in population corresponds very nearly to the six democracies, and, in geographical dimensions, almost the same proportions are exhibited.¹ All of them are situated in the mountainous interior of the country, where life is essentially pastoral, where large cities have never grown up and are never likely to be found in the future. Means of existence have remained much the same for centuries, and even in these later days the primitive occupations of the fathers have felt less severely than in other places the pressure of change. The wants of the people do not require for government as elaborate machinery as that demanded by larger industrial communities.

The *Landesgemeinde* is also possible, because the states are not only small in relation to other members of the confederation, but are actually diminutive in area. The longest dimension of any one of them does not exceed thirty miles, hence the distance from home to the chief town would not, for any large number, be more than ten or fifteen miles. For the greater part of the popula-

¹ Population in 1888: Nidwalden, 12,538; Appenzell Interior, 12,888; Obwalden, 15,041; Uri, 17,249; Glarus, 33,825; Appenzell Exterior, 54,109. The estimates for 1897 change these figures but very little.

GOVERNMENT IN SWITZERLAND

tion, the travel involved in attending the assembly is much less than that. Uri is long and narrow, requiring the greatest amount of travel from its outskirts to its capital, but Inner Appenzell is a circle about ten miles in diameter, in which the seat of government is nearly central, hence it is not a very difficult matter, in any case, to secure the attendance of a large proportion of the voters.

The size of the assemblies is also in their favor. It would not be possible to conduct successfully a folk-mote which contained as many voters as the state of Massachusetts, though that commonwealth has had abundant experience in town meetings. It is astonishing to see how well the larger assemblies of Switzerland are managed, when one considers that it is not an ordinary political mass-meeting, but a legal institution, demanding exactitude and fairness at every step.

A difference in procedure may be noted between the larger and the smaller cantons, growing out of the fact that larger crowds must be handled. In Outer Appenzell and Glarus there is less of the picturesque, and stricter attention to the plain cold facts of politics. Ten thousand men is a large number to make their own laws in person, but sometimes more than that are assembled in the public square of Trogen. Ten thousand men in black, framed in a quadrangle of ancient buildings, are an interesting sight under any circumstances, but doubly impressive when they are occupied in making law. This, however, is the extreme

CANTONAL LEGISLATION

limit in the size of the *Landesgemeinde*; in other cantons there is less danger of unwieldiness. If the voters in these states amount to about 25 per cent of the population,¹ the largest assembly would bring together about 13,500 people, and the smallest about 3000, provided that all who were qualified were present. This, however, will probably never be the case. Statistics of the votes upon a series of national questions show the highest degree of participation to have been 86 per cent of the voting population;² hence we may expect that not much over three-fourths of the qualified citizens will come together at any one time. This reduces the size of the assembly to about 10,000 for Outer Appenzell and about 2200 for Nidwalden. Thus the slight population of these districts is represented by a still smaller number of law-makers, and the uncertainties of mass-meeting government are very decidedly reduced.

Whether this form of government is likely to endure is a question not easy to answer. The *Landesgemeinde* has been abandoned by two states in modern times, but their example affords no criterion. If population does not materially advance its rate of increase, nor ordinary rural conservatism lose its tenacity, we may expect the assemblies to continue to exist for a long time.

¹ "Zeitschrift für Schw. Statistik," 1879, p. 62.

² Idem, p. 62.

GOVERNMENT IN SWITZERLAND

LEGISLATURES

In all of the states there are representative assemblies elected for the purpose of making laws.¹ Even in the folk-mote cantons, where we have observed the people legislating in person, there are also smaller councils chosen for a similar purpose. The amount of responsibility laid upon legislatures, however, varies widely, the degree of discretion being measured, as stated above, by the extent to which laws are brought under revision by popular vote. Those states which meet in the *Landesgemeinde* and those employing Obligatory Referendum may be classed together, for in both cases all laws of a general nature are ratified by the people. Where Optional Referendum obtains, the legislature has more latitude, since its work may rest as a finality, provided no one thinks best to agitate for a popular vote. Certain definite fields of legislation are prescribed for the representative bodies, within which they are the source of law until notified to the contrary. Much of their work will stand as enacted, but always with the tacit consent of their constituents. Hence the ultimate source of law in every canton, except one, is the people, not in a distant, theoretical way, but in a practical and direct manner.

The legislatures differ much in outward construction and scope of action, but in principle are

¹ In a majority of cantons called the "Grand Council," *Grosser Rath*, or *Grand Conseil*; in a few, *Landrath*, in others, *Kantonsrath*.

CANTONAL LEGISLATION

alike. They are councils for the preparation of business for the larger assembly of the people. They are uniformly bodies of one chamber, unlike the federal legislature; but the state legislature was in existence centuries before the present confederation was formed. The mediæval city council was the ancestor of the modern state assembly, and it is easy to see how one could be transformed into the other. The government of large states like Bern and Zürich was, in the middle ages, city government, for the rural portions of those commonwealths were considered subject to the fortified centres, and it was a long time before persons living in the country or in the villages could claim equality in citizenship. To-day the distinctions are abolished, but traces of the old framework still remain.

The members of legislatures are elected in districts by direct popular vote, in varying proportions to population. It is not intended, however, that delegates shall be simply ambassadors of their districts, for they must not take binding instructions from their constituents, but consider themselves representatives of the whole state. Freedom of opinion, consequently, and liberty of judgment to legislators are fully provided for.

The varying proportions of delegates to population offer interesting studies in representation. In all the states the ratios are large, as compared with countries of greater area; yet it is a curious fact that in most of those cantons which are governed

GOVERNMENT IN SWITZERLAND

by *Landesgemeinde* the legislatures are larger, in proportion to number of inhabitants, than the assemblies of less democratic governments. In Uri there is one delegate for every four hundred inhabitants, in Nidwalden and Inner Appenzell one to two hundred and fifty, in Obwalden as many as one to one hundred and eighty-eight. It would seem as if the people were not content to go up once a year and make laws in person, but must also send a good-sized minority of the citizens to the legislature to keep the machinery of state moving during the interval. This procedure is doubtless due to the fact that at best the states are small, and even under the large ratio the legislatures do not become large assemblies. In Obwalden the number of members is fixed at eighty, and other democracies have between fifty and sixty. The small number of inhabitants permits a large representation, without causing the legislatures actually to become as numerous as in the more populous cantons.

The following tables will show the condition of representation in the legislature of each canton, the figures standing for the number of inhabitants to each delegate :—¹

Zürich	.	.	.	1500	Schaffhausen	.	.	500
Bern	.	.	.	2500	Appenzell Exterior	.	1000	
Luzern	.	.	.	1000	Appenzell Interior	.	250	

¹ Zürich, Constitutional Amendment of 12th August, 1894. Zug, Constitutional Revision of 1894. In Graubünden the number is fixed by statute, not by the constitution.

CANTONAL LEGISLATION

Uri	400	St. Gallen	1500
Schwyz	600	Graubünden, about . . .	1300
Obwalden	188	Aargau	1100
Nidwalden	250	Thurgau, 250 voters, inhabitants about . . .	1000
Glarus	500	Ticino	1200
Zug	350	Vaud, 300 voters, in- habitants about . . .	1200
Freiburg	1200	Valais	1000
Solothurn	800	Neuchâtel	1000
Basel-City, about . . .	625		
Basel-Land	800	Geneva	1000

Citizens of the United States are apt to think that they are living under a highly representative, if not a democratic system of government; but when we examine into the amount for which one person stands in making the laws which govern him, it seems to be a long way from the Swiss example. In the American legislatures the number of members of the lower house does not exceed one to twelve hundred inhabitants, in one-third of the states it is one to more than fifteen thousand, and in one case is at least one in forty thousand.¹

The qualifications for election to the Swiss legislatures are usually the same as those governing the right to vote, namely, the completion of the twentieth year, and full possession of civil rights. In a few cantons the age of twenty-five years must be first attained before entering the state assembly.

¹ New Hampshire, 1134; Iowa and Michigan, 16,000; Illinois, 20,000; Pennsylvania, 21,000; Ohio, 29,000; New York, under the census of 1900, more than 40,000.

GOVERNMENT IN SWITZERLAND

The terms of office vary in the different cantons from one year to six, but are usually fixed at three or four, with no hindrance to reëlection. Deputies receive ordinarily a small payment out of the cantonal treasury for their services; in some states three francs for each day of attendance, in others as high as six. It cannot be said that the pecuniary inducements of political life are great. The number of sessions held annually varies all the way from one to nine, but in a majority of cantons the legislature meets but twice a year. Frequency does not seem to be regulated by form of government, for the rural state of Obwalden and the city of Basel are alike in having numerous sessions each year, one six and the other nine, while Uri and Luzern agree in having three.

Legislatures, within constitutional limits, are masters of their own time, and establish their own methods of organization. They are judges of the qualification of their members, adjourn from time to time upon their own motion, and cannot be dissolved by any other department of government. We observe in this latter fact that the state assemblies, notwithstanding some confusion of functions, are not parliaments after the plan of the legislature of England, for they meet at stated intervals independently of any call or dismissal by the cabinet. The period of service is not indefinite, but distinctly terminable, and the life of the legislature is measured by the constitution, not by the exigencies of politics. An apparent exception to

CANTONAL LEGISLATION

this fixity of tenure is the provision found in a few cantons for dismissing a legislature by popular vote. If a certain number of voters¹ petition for it, the question must be submitted to the people, whether or not the assembly shall be recalled and a new one elected. In case the recall is affirmed the functions of the legislature cease. This, however, is "an appeal to the country" from the country itself, not an executive dissolution.

The functions of the Grand Council partake of the nature of all three departments of government, legislative, administrative, and judicial. In the democratic cantons the legislation naturally will be of minor importance, because the *Landesgemeinde* undertakes the weightier matters. Supervision of the executive will be a large part of the work. The constitution of Uri calls the *Landrath* "the representative law-making and highest administrative body,"² and the list of duties prescribed will serve as an example of that class of states. This house of representatives has for its objects: the preparation of the order of business for the *Landesgemeinde* and the subsequent approval of the minutes of that meeting; the previous discussion of laws and petitions before they are submitted to the popular assembly; the interpretation of the acts of the *Landesgemeinde* in case there is doubt as to their

¹ Bern, 12,000; Luzern, 5000; Basel-Land, 1500; Solothurn, 4000; Aargau, 5000; Schaffhausen, 1000; Thurgau, 5000. This privilege is very little used.

² Art. 54.

GOVERNMENT IN SWITZERLAND

meaning; to speak as the voice of the canton on questions submitted to the federal Referendum; the issue of ordinances necessary to execute the federal and state laws; ordinances regulating civil and criminal procedure, and regulations for the organization of the administrative and judicial departments; conclusion of treaties and agreements; supervision of the whole cantonal administration; especially, auditing of accounts and budget estimates; decision of conflicts between the executive and the judiciary; examination of petitions and applications for pardon; regulation of salaries and payment of officials elected by the legislature itself; regulation of fees to be paid to the state; election of a large number of subordinate officials in the various departments, chiefly on recommendation of the state executive council (*Regierungsrath*).

This catalogue of duties will also describe in general terms the functions of the legislature in the states employing the Obligatory Referendum. The Grand Council is, in reality, a supervisory committee, taking a hand in all the various operations of government, preparing matters for the larger assembly below it, and keeping an eye on the smaller committee above it. In the cantons where Optional Referendum is in vogue, the legislature has power to spend money below a specified limit; to enact laws of specified kinds, usually not of general application; and to elect more important officials, the amount of discretion rising gradually

CANTONAL LEGISLATION

till the complete representative government is reached.

In Luzern, where the Referendum is optional, the legislature has discretionary power to expend money to the amount of 200,000 francs, or up to 20,000 francs annually for a series of years; all sums above that point are liable to be called up for popular vote. In Schaffhausen the limit is 150,000 francs, and in Zug, a still smaller canton, it is but 40,000. Where the states have Obligatory Referendum there is usually also a limit within which the Grand Council may spend money without further ratification, even when all general laws must be submitted to vote. In Vaud the popular approval must be obtained for an outlay exceeding 500,000 francs; in Valais the Referendum is obligatory for financial matters only, and for an expenditure of 60,000 francs. Thus an endless variety exists in the prerogative of legislatures, making it impossible to present an exact average statement of their functions. Enough has been said, however, to show that the Grand Council is, on the whole, a body which prepares and examines legislation for the people, rather than an authority to legislate in place of the people. In almost every canton the people have retained the final decision on matters of greater importance.

The one republic, Freiburg, resembles in general outline an American state more than it does the neighboring cantons. After enumerating the duties of the legislature in a manner similar to that given

GOVERNMENT IN SWITZERLAND

earlier in this chapter, the constitution of Freiburg states finally, "it exercises all parts of the right of sovereignty which are not expressly given to some other authority by the state constitution." Executive and judicial powers are ascribed to separate bodies in the state, but both of these are elected by the legislature. The Council of State, or cabinet, is the creation of the Grand Council, and holds office for an equal length of time.¹ The judges of the *Kantonsgericht*, or state supreme court, are likewise dependent on the legislature and responsible to it for the administration of justice. Hence, although not acting through the same persons in all departments of government, the Grand Council is in fact the controlling power in all spheres of sovereignty. There is in Freiburg no appeal to popular vote except on the adoption or revision of the constitution.

To appreciate fully how much the people share directly in the enactment of law one must call to mind, in the first place, all the various forms of representation. At the opposite extreme are the six pure democracies where the people actually come together and ordain laws by show of hands. Between the folk-motes and pure representation stand the cantons where laws of a weighty character either must be or may be submitted to popular vote. The obligatory ratification is found in some form in ten states. The optional system will receive further consideration in a later chapter.

¹ Five years.

CHAPTER IV

PROPORTIONAL REPRESENTATION

IN connection with legislation and legislatures we have now to consider a special form of election, by means of which it is sought to have political groups equitably represented in the law-making bodies. In several cantons the system of proportional representation has been introduced. The laws vary somewhat in details, but in principle they provide that each party shall have exactly that proportion of the whole number of delegates to the legislature which the party vote bears to the whole number of votes cast.

It is well known that, under the ordinary system of election by single districts, large minorities are often without any representation whatever in legislative halls. If we add together the minorities in all the legislative districts in a given state, we usually find that a large body of voters has no voice or responsibility in the making of law. It is possible, indeed, to arrange legislative districts so that a majority of the people may have a very small percentage of representatives of their own views. Hence in five of the cantons and two of the large cities of Switzerland an attempt has been made to

GOVERNMENT IN SWITZERLAND

give every citizen and every party due proportion in their councils.¹

The first essential part of this system is a division of the canton into districts of such size that more than one delegate shall be elected from each. No matter what the size of the legislature prescribed in the constitution, whether the number of delegates be fixed or whether allotted according to the number of inhabitants, the districts must each be large enough to send several representatives. Not all of the districts in the Swiss proportional cantons are consistent in this respect, but as a rule they have plural representation, varying from two to twenty-eight members each.

This arrangement having been once established, the remainder of the system consists in provisions for the convenient nomination of candidates by all parties, or groups of voters, and for a calculation of the ballots by which the candidates of every group shall get their share in proportion to the whole number of votes in the given district.

Nominations can be made by any party or group of people, provided the lists are signed by a stated number of electors and are handed in at least five days before the election. The number of voters necessary to nominate is not large. In Neuchâtel two are sufficient. In Solothurn the petition must be signed by as many voters as there are candi-

¹ Ticino, Neuchâtel, Geneva, Zug, Solothurn, the cities of Bern and Basel. In St. Gallen allowed but not adopted. In Freiburg communes may adopt the proportional plan if they so desire.

PROPORTIONAL REPRESENTATION

dates to be elected. Each ticket must be given a distinctive party title and should contain as many names as there are vacancies to fill. The petitioners should also designate certain persons to represent the party in case there should be a contest, or any other questions should arise.

No candidate may appear on more than one ticket. If nominated by more than one party, he must choose between them. If he does not do this himself, the matter will be decided by the official bureau by casting lots. Vacancies occurring by these changes on any list will be filled usually by the committee of the party which nominated the ticket. The lists of candidates as perfected are published a few days before the election, and only those persons may be voted for whose names have been thus publicly announced. It goes without saying that full opportunity is given before the election to contest the validity of petitions, to furnish proof that the signers are qualified voters, or that the candidates are eligible.

There are various ways of voting a ticket thus nominated. Writers on political science are divided in opinion as to the system which will insure the most effective use of the individual ballot. In Switzerland the cantons have thus far without exception adopted the group method, or "free list" system. The elector has as many votes as there are vacancies to be filled. He is not confined in his choice to one list, but may vote for any person in the published list of candidates. The Aus-

GOVERNMENT IN SWITZERLAND

tralian, or blanket ballot, has not been introduced. The voter uses either a written ballot or a printed party ticket. In Neuchâtel he may change the printed ticket, provided he makes all the changes on a single ballot and substitutes only names which have been properly nominated. In Neuchâtel the voter also receives an envelope with the necessary number of lines printed upon it. He may either write the names on the outside or may insert a printed ticket in the envelope.

Although the elector has as many votes as there are offices to fill, he may not cumulate these votes upon one or a few candidates.¹ If he does not mark the full number of names, the balance will be counted for the ticket as a whole, but the voter must indicate which ticket is to receive the surplus, otherwise his vote will be void. The method of receiving votes does not differ from the ordinary systems which guard against illegal voters and guarantee the secrecy of the ballot.

It is in the counting of the ballots that the idea of proportion is put into effect. The board of election first determines how many valid votes have been cast, then how many for each ticket or party, and how many for each candidate. The whole number of votes is then divided by the number of vacancies to be filled in order to find the so-called "electoral quotient." The number of votes given each ticket is then divided by the electoral

¹ Except in Canton Zug, where the cumulative vote is combined with the list system.

PROPORTIONAL REPRESENTATION

quotient to find how many representatives are elected from each. Every group has a right to as many delegates as the quotient is contained times in its vote. If a party does not receive enough votes to equal this divisor, it has no representative.

A simple case in figures will perhaps make the matter clearer. In a constituency of 60,000 voters there are 10 candidates to elect with three parties competing. Of these the Liberals receive 30,000, the Conservatives 20,000, and the Socialists 10,000. The electoral quotient in this case is found by dividing 60,000 by 10=6000. The party division would, therefore, be as follows:—

Liberals	.	.	6,000 into 30,000.	5 delegates
Conservatives	.	"	" 18,000.	3 "
Socialists	.	.	" 12,000.	2 "

Under the ordinary form of election in a single district, the Liberals, having the highest number of votes, would have had all the representatives with only one-half the voters. If the district had been divided into ten wards, it would have been still possible for them to elect nearly all delegates by a majority in the greater number of wards.

Elections, however, do not result as simply as in the example given. There are usually fractions after the division, and minorities may come almost to the representation point without reaching it. If, in the same district, the number of delegates were fifteen, the quotient would be 4000, and we might have the following result:—

GOVERNMENT IN SWITZERLAND

Liberals . . .	35,000.	Delegates 8.	Fraction 3,000 votes
Conservatives .	16,500.	“ 4.	“ 500 “
Socialists . .	8,000.	“ 2.	
Clericals . . .	500.	“ 0.	

By an exact division, only fourteen delegates are here elected, but the laws provide that, in such a case, the number shall be completed from the ticket having the highest number of votes. The Liberals would thus get nine.

After the number has been thus fixed for each ticket, it must be determined which candidates are elected from the various parties. These are always the men who receive the highest number of votes on their respective tickets. The Liberals presented fifteen candidates, but probably the votes for each differed from the other. The nine highest will represent the party. In case two candidates on the same ticket had the same number of votes the choice would be decided by lot. On the other hand, if the number of delegates resulting from the division is greater than the number to be elected, one must be taken from the ticket which had the smallest number of votes.

The lists of candidates, both the elected and those who failed, are preserved, and a plan has been devised for filling vacancies which may occur during the term of office. In such an event the list of those who were not elected is examined, and the person who had the highest number of votes on the same ticket is appointed by the Secretary of State to fill out the vacant term. If there is no

PROPORTIONAL REPRESENTATION

candidate in that situation, the vacancy will be filled from the ticket having the next highest number of votes, provided this was equal to the electoral quotient.

There are slight variations in the laws of the several cantons, intended to adapt the principle to previous custom or to benefit by the experience of other states. In Solothurn and the city of Bern the electoral quotient is obtained by dividing the number of votes by the number of vacancies plus one. This produces a result mathematically more nearly correct. Fewer candidates need be elected on fractions or remainders. With the figures used in the last example we should reach the same result by a different route.

Total votes	. 60,000.	Candidates	15 + 1.	Quotient	3,750
Liberals	. . 35,000.	Delegates	9.	Fraction	1,250
Conservatives	16,500.	"	4.	"	1,500
Socialists	. . 8,000.	"	2.	"	500
Clericals	. . 500.	"	0.		

This method is likely to give a fairer representation to the larger parties.¹

Proportional Representation has been in use in Switzerland since 1890. Agitation in behalf of the system began in the middle of the century, and later, societies were formed to advance the idea, but no practical application of proportion was introduced until one of the cantons was almost forced to adopt the plan to quiet a desperate political upheaval.

¹ See J. R. Commons, *Proportional Representation*, App., p. 272.

GOVERNMENT IN SWITZERLAND

The canton of Ticino under the previous method of district elections had suffered both from the overbearing conduct of the majority and from the discontent of the minority. The conservative majority were in the habit of appropriating all available offices, and a few dishonest persons found opportunity to benefit by the monopoly held by the party. The minority were discontented because the votes were so nearly equal as to be exasperating, and the districts had been so gerrymandered that they were hopelessly left out. In an election for the cantonal legislature there were 12,653 Conservative ballots and 12,018 Radical, but the districts were so arranged that the first party elected 77 members and the other only 35.¹ The radicals, becoming desperate after many years of disappointment, took matters into their own hands, drove out the government by violence, and possessed themselves of the legislature and state offices. The event brought on the federal intervention which we have discussed in another place.² The radicals were inclined to change the districts to suit themselves, but the final result was the introduction of proportional representation and the immediate pacification of political strife. No violence has occurred since then.

The proportional method has been slowly adopted both for state and for municipal government. In

¹ Statistics from McCracken in "Prop. Rep. Review," Vol. I., p. 12.

² See page 49.

PROPORTIONAL REPRESENTATION

Bern the system applies to the city, but not to the state. In Geneva and Basel the territory is so small that the problem is about the same as it is in a municipality. In minor details there is yet opportunity for improvement, but the system as a whole is everywhere working smoothly and to the satisfaction of the people. The difficulties which seemed to lurk in the marking and the counting of the ballots disappeared when votes were actually taken, and no community which has once taken up the plan has abandoned it. Every party is satisfied that its votes are counting as far as they reach.

It is not in place here to discuss the respective value of the various systems used in other parts of the world. Minority representation as advocated by Hare, Mill, and others has found application in Australia in a decidedly different form, and many plans have been suggested by writers on the subject. The Swiss cantons have adopted a method which fits into the historical development of their political life. Their system permits the expression of individual choice and party fealty at the same time. It is the form of proportional representation which would accommodate itself most easily to American political conditions.

CHAPTER V

REFERENDUM AND INITIATIVE

A POPULAR vote under the name Referendum was known in the valleys of Graubünden and Wallis as early as the sixteenth century. Here existed small community federations which regulated certain matters of general concern by means of assemblies of delegates from each village. These conventions were not allowed to decide upon any important measure finally, but must refer the matter to the various constituencies. If a majority of these approved, the act might be passed at the next assembly. This primitive system lasted till the French invasion of 1798, and was again established in Graubünden in 1815. The word Referendum was also used by the old federal diets, in which there were likewise no comprehensive powers of legislation. If not already instructed the delegates must vote *ad referendum* and carry all questions to the home government.

The institution as now known is a product of this century. It originated in the canton of St. Gallen in 1830, where at the time the constitution was undergoing revision. As a compromise between the party which strove for pure democracy and that desiring representative government, it

REFERENDUM AND INITIATIVE

was provided that all laws should be submitted to popular vote if a respectable number of voters so demanded. Known at first by the name Veto, this system slowly found its way into several of the German-speaking cantons, so that soon after the founding of the confederation in 1848, five were employing the Optional Referendum. Other forms of popular legislation were destined to find wider acceptance, but at present in eight states, including three of the Romance tongue, laws must be submitted on request.¹ The statutes thus subject to inspection, as stated before, are usually enactments of general application. In some cases those requiring urgency are excepted, in others, no exception is made and any law may be called up.

The usual limit of time during which the petition must be signed is thirty days. These requests are directed to the executive council of the state, and that body is obliged, within a similar period after receiving the same, to appoint a day for the vote. The number of signers required varies from 500 in the little canton Zug to 6000 in St. Gallen, or from one-twelfth to one-fifth of all the voters. Some states provide that in connection with the vote on the bill as a whole, an expression may be taken on separate points. Custom varies as to the number of votes required to veto a law. Some fix the minimum at a majority of those taking part in the election, and others at a majority of all citizens,

¹ Basel-City, Schaffhausen, St. Gallen, Luzern, Zug, Neuchâtel, Geneva, Ticino. In Uri also for ordinances of Landrath.

GOVERNMENT IN SWITZERLAND

whether voting or not. In case the vote is against the bill, the matter is referred by the executive council to the legislature. This body, after examining into the correctness of the returns, passes a resolution declaring its act to be void.

By means of the Initiative, or imperative petition, the order of legislation just described is reversed, since the impulse to make law is received from below instead of above.¹ The method of procedure is about as follows: Those who are interested in the passage of a new law prepare either a full draft of such a bill or a petition containing the points desired to be covered, with the reasons for its enactment, and then bring the matter before the public for the purpose of obtaining signatures. Endorsement may be given either by actually signing the petition or by verbal assent to it. The latter form of consent is indicated either in the town meetings of the communes, or by appearing before the official in charge of the petition and openly asking that his vote be given for it. If, in the various town meetings of the canton taken together, a stated number of affirmative votes are given for the petition, the effect is the same as if the names of voters had been signed. When the signature method is adopted, all those who desire to endorse the petition are required to go to the office of the person

¹ Objection may perhaps be made to this application of the terms "above" and "below" in contrasting legislature and people. In some American states the order might well be reversed.

REFERENDUM AND INITIATIVE

in charge of the bill. This is always a public officer, either the head man of the town or some precinct official specially designated. Here signers must prove their right to vote as in any other election. No fees are to be drawn from voters for witnessing their signatures. The number of names required is about the same in proportion to the whole body of voters as for the Optional Referendum.

The requisite number of signatures having been procured, the petition is carried to the legislature of the canton. This body must take the matter into consideration within a specified time (Solothurn, two months), and prepare a completed draft in accordance with the request. It may also at the same time present an alternate proposition which expresses its own ideas of the matter, so that voters may take their choice. In any case the legislature gives an opinion on the project, as to its desirability or propriety, and the public has thus a report of its own select committee for guidance. The bill is then submitted to the voters, and on receiving the assent of a majority, and having been promulgated by the executive authority, becomes a law of the land.

From what has been stated above, it will be observed that the relation of the people to the regulations under which they live is well expressed in a clause of the constitution of Zürich,¹ "The people exercise the law-making power with

¹ Art. 28.

GOVERNMENT IN SWITZERLAND

the assistance of the state legislature." Whether appearing in person or by deputy, the individual voter is the ultimate source of legislation. He may leave certain matters to the discretion of representatives, but retains a control over their action not generally found. In the United States it is regarded as a principle of common law that a power once delegated cannot be redelegated, and that a legislature cannot shift its responsibility back upon the people by referring a subject to popular vote. A vote thus taken is simply an expression of opinion for information, not a legislative act.

In Switzerland, however, the successful Initiative approaches very closely to an act of legislation. The signatures are not haphazard collections of names, but are taken after official inspection of the qualifications of the signers. Attention to the preliminary request is obligatory, and the final popular vote leaves no discretion to the legislature; it must simply carry the will of the people into effect.¹ This is a nearer approach to

¹ This has been further established by judgment of the Federal Supreme Court. In 1895 some 2111 voters of Basel petitioned the cantonal legislature to change the election law by adopting proportional representation. The legislature refusing this, the popular initiative was appealed to, and the proposal was accepted by vote of the people. Whereupon the legislature passed a bill which simply amended the existing electoral system and introduced compulsory voting. On appeal this action was declared unconstitutional. The legislature must prepare a law corresponding to the petition. If it desired to introduce other matters, these must be offered in a separate bill. — Hilty, "Politisches Jahrbuch," 1899, p. 412.

REFERENDUM AND INITIATIVE

theoretical democracy than has been exhibited by any other government of like extent, for the American states adopt only their constitutions by such plebiscites. Rousseau's ideal of democratic government was the people assembled in person at the central point of the state, making and unmaking its own laws; but he feared that his native country was too rough and the climate too rigorous to see that fully carried out. Yet, by the operation of the petition and the veto, Rousseau's dream is more than fulfilled, since every citizen may participate in making laws of the gravest import, without leaving his own precinct.

Laws being thus easily changed, the distinctions between fundamental and statute law are often lost sight of in forming the constitutions — a mistake not confined to Switzerland. Since it is, however, a fixed principle of the federal constitution that the constitutions of the cantons shall be open to revision at any time, the results are not the same as in the United States, where a long limit of time is sometimes fixed before a new constitution can be adopted, and fundamental legislation may become outgrown and burdensome before it can be set aside.

Revision of the constitution is accomplished by the instrumentalities which are employed to change other laws. Amendments may come as suggestions from the legislature, or, where Initiative obtains, at the instance of popular agitation. In cases where total revision is wanted, the legislature

GOVERNMENT IN SWITZERLAND

of its own accord, or on petition of a given number of voters, submits first the question whether the constitution shall be revised or not, and, if revision be affirmed, whether it shall be done by the legislature itself or by a constitutional convention. If it is placed in the hands of the legislature, a new assembly is usually elected, in order to get the freshest representation of the people, and if a constitutional convention is preferred, this body is chosen on the same basis. The work of either constituent body must be accepted by a majority of voters before taking effect.

As to the results of these institutions, it may be said, in general, that the people of Switzerland have shown themselves worthy of the confidence they have placed in themselves. Mistakes have been made, but often these mistakes have been remedied by the same methods later on. The educational value of the system has been great, for every advancement in constitutional law, from the chaos before 1848 down to the present strong federal government, has been made not alone by lawyers and statesmen but with the expressed consent of the voting inhabitants. The study of direct legislation is, however, not confined to the cantons. Referendum and Initiative have been also admitted to the federal constitution and these popular functions will be considered again in relation to national government.

CHAPTER VI

THE CANTONAL EXECUTIVE

THE chief executive power of the cantons of Switzerland is uniformly intrusted to a committee of officials, known by various titles, but in a majority of cases called the Council of State.¹ In a little more than half of the states this body is elected by popular vote; in the democratic cantons, of course, by show of hands; in the others, usually on a single ticket. Where these methods do not obtain, the Council is chosen by the legislature. The number of members varies from five to thirteen, not necessarily according to the size of the canton, but according to the political tastes of the different sections. The term of office is in some states one year, in others five; the more common limit being three or four.

The functions of the Council of State are, primarily, the administration of the laws as enacted by the people or by the representative legislature, but there are also duties which are something more than executive. The Council is expected to guard well the interests of the state in its relations with

¹ Designations used are: *Regierungsrath*, *Conseil d'État*, *Consiglio di Stato*, *Standeskommission*, *Kleiner Rath*, *Landammann und Rath*.

GOVERNMENT IN SWITZERLAND

other cantons and foreign powers, to preserve order and public safety within, to watch over the moral and material welfare of citizens, and, in general, to carry out the decrees of the legislature or people. This negative, ministerial character, however, is not all. The Council also takes initiative in the political and legislative activity of the state. It lays before the law-making body the financial necessities of each year and reports on the annual receipts and expenditures, as do executive boards under all forms of government; but in Switzerland the executive councils may also propose laws other than fiscal, and their suggestions are received by the legislatures, not merely as petitions, but as bills to be acted upon. The Council of State is supposed to be on the lookout continually for new political developments, and to project new measures to suit the necessities of the times. Although the right to propose laws belongs to any member of the legislature, or, perhaps, to any citizen, this is, above all, the privilege of the executive cabinet, which has charge of the administration of existing statutes. Hence we find that members of the Councils of State may attend the sittings of the legislatures and may address those bodies on questions coming before them, though generally without the right to vote,¹ or to be at the same time members of the legislative branch.

The executive council is called upon, under cer-

¹ "Mit beratender Stimme."

THE CANTONAL EXECUTIVE

tain circumstances, not only to suggest new laws, but also to interpret and apply those already enacted; in other words, the cabinet becomes at times a judicial body, to which cases are carried for decision. For instance, the *Regierungsrath* in Aargau has a general supervision of town administration, and becomes a court of appeal when questions of community taxation and finance are brought into dispute.¹ The constitution of Solothurn makes it a duty of the executive council or cabinet to decide, so far as they may come within its competence, all appeals, petitions, and complaints; with the added injunction that in all decisions on appeals the reasons for judgment must be given.² The questions which are thus left to the chief executive council are, in any of the states, chiefly of an administrative character, yet they give a certain complexity to this branch of government, which is particularly noticeable in the institutions of Switzerland, and which will give reason for a brief discussion of the mixture of powers later on.

In some of the cantons a discretionary power to expend money within fixed limits, without regard to the legislature, is left to the executive council. The appointment of certain minor officials is also usually a cabinet duty, sometimes specifically named, sometimes under a constitutional clause which makes the Council the residuary legatee of

¹ Aargau, Staatsverfassung, Art. 39, l.

² Art. 38, § 4.

GOVERNMENT IN SWITZERLAND

all appointing powers not granted to any other branch of government. Along with the administration of state affairs, there is, finally, a general supervision of districts and communities. The cantonal executive does not confine its care to large cantonal matters alone, but concerns itself with local administration as well. This duty, however, is undertaken merely by way of supervision, not by dictation or interference, as we shall observe when we come to study community life more in detail.

For the better management of business the work of the Council is usually divided into departments, as in the federal cabinet, with one councillor at the head of each division; but, also as in the case of the national executive, the state cabinet acts as a unit, not by the divided authority of its members. Nor does any one man hold the executive power of a canton in his single hand. Administration is vested in a committee; for this committee a chairman is always chosen, but he is not the chief executive to whom all the others are responsible. His title in the German cantons is frequently *Landammann*; in Luzern, *Schultheiss*; in the French and in many of the German states he is called President, but in all these cases the full designation is "President of the Council of State," not "President of Geneva," etc., as one might be led to think from American analogies.

The *Landammann*, or President, is selected either by the state legislature or by the Council

THE CANTONAL EXECUTIVE

itself, the term of office usually being limited to one year at a time. A Vice-President or *Statthalter* is elected at the same time, and the provision is frequently made that the outgoing President cannot be made Vice-President during the following year, nor shall the same person be Vice-President for two years in succession. During his term the President is the highest representative of the canton; he speaks in the name of the canton, but in power does not quite reach the position of the Governor in the United States. The latter is an independent branch of government, for, although he does not appoint the other chief officers of state and these may not be under his direction, he is not bound by the decrees of a cabinet. Furthermore, the Governor has a veto power over legislation, which in Switzerland is found neither in any single officer, nor even in any executive board.

The point of contact between the executive and legislative branches of government is quite opposite to that usually found in the states of the American republic. Instead of being the mute servant of the law-making power until bills have been enacted and are about to be put into operation, the cabinet proposes new measures in advance. This is also the privilege of our Governor, but his suggestions have little more weight than those of an influential newspaper, while the Swiss executive councils may go upon the floor of the legislature and explain and defend their proposals while in the process of enactment. Standing at the head of affairs, the

GOVERNMENT IN SWITZERLAND

cabinet observes the workings of existing machinery, and can suggest improvements with better understanding than is possible to persons at a greater distance. This guiding force is recognized and accepted, and party ideas, instead of floundering about under uncertain leadership, find expression through spokesmen who are both appointed by popular will and are conspicuously responsible. In the constitution of Vaud it is distinctly provided that all bills proposed by private members of the legislature and which reach consideration must be referred to the Council of State for its opinion. Yet, like the Federal Council, the executive boards in the cantons are not party cabinets in the ordinary parliamentary sense ; they do not retire from office upon the rejection of their measures. The Council is chosen for a definite term of years, and at the end of that time the question comes up as to whether that particular body of men have fitly represented the party or policy then dominant.

For the better administration of internal affairs nearly all the cantons are divided into Districts,¹ over which are placed officials who represent the state government and are variously known as Prefects, *Bezirksammänner*, *Oberamtänner*, *Amtsstatthalter*, or *Bezirksstatthalter*. In the greater

¹ In the German states called *Bezirk*, *Kreis*, or *Amt*; in the Romance cantons, *district*, *cercle*, *circolo*. In several states of small territory the District is dispensed with, the state government dealing directly with the community. This is the case in Zug, Baselstadt, Schaffhausen, Appenzell Exterior, and Geneva.

THE CANTONAL EXECUTIVE

number of cases these officials are elected by popular vote, although in a few instances they are appointed by the legislature, or even by the Council of State. Whatever the mode of appointment, the district officer is the agent of the central government in the territory over which he is placed. In a small way he is the governor of a group of towns, carrying out the laws enacted by the legislature and enforcing the ordinances of the executive council. In some cases this prefect is assisted by a district council, which discusses the affairs of their province, much in the same way that county commissioners govern in the United States. This *Bezirksrath* is, however, advisory to the *Bezirksammann*, rather than a body to which he looks for commands, for he is responsible chiefly to the state government. The supervision of the district council extends, in some cases, to the subject of wardship and care of orphans, matters which in America are usually referred to a probate court of record under a single judge.

The term of office for district governors corresponds in length to that of other cantonal officials, varying from one to five years, with reëligibility. To illustrate more particularly the scope of the office, we may quote the instructions found in the constitution of Aargau.¹

“The following duties are laid upon the *Bezirksamt*: —

“*a.* It attends to the execution of the laws, the

¹ Art. 43.

GOVERNMENT IN SWITZERLAND

ordinances and orders of the Council of State, the execution of judgments of court, as well as all other duties laid upon it by law in civil matters.

“*b.* It attends to the preservation of public order and safety.

“*c.* It attends to all duties laid upon it in connection with the criminal law.

“*d.* It is highest guardianship court of the District, and has supervisory authority over the administration of communities and their domains.

“*e.* It has supervision over officials subordinate to it.”

These subordinate officers include, beside minor functionaries connected with the District itself, the head men of villages. The state administration does not appoint separate officers to carry out general laws to the smallest detail, but makes use of the machinery of government already existing for other uses. The mayors of towns are, for the most part, local officials, but when mandates of the state are to be carried out in their locality, they act as agents of the central administration. For instance, we may imagine the announcement of a general election to start from the council table of the *Regierungsrath*, to proceed from there to the *Bezirksammann*, thence to the *Gemeinde President*, or mayor, who causes it to be proclaimed or posted for the information of all citizens of his community. Reports on administration would follow this course in reverse order.

In Schwyz the government of the District as-

THE CANTONAL EXECUTIVE

sumes almost the form of a democratic state. It will be remembered that in this canton before 1798 the *Landesgemeinde* was the source of all authority, but this arrangement was afterward given up. That institution, however, seems to have descended to the District, and now there are six folk-motes instead of one. "Every *Bezirk* has a *Bezirksgemeinde*," consisting of all male citizens who have reached their majority. The constitution of this meeting resembles closely those found in the larger states. "The *Bezirksgemeinde* assembles ordinarily once a year on the first Sunday in May; extraordinarily, whenever called together by the district council, or whenever one-fifth of the voters demand." It is the duty of this assembly to elect a share of the judges of the Cantonal Court, and a complete set of district officials, namely, the *Bezirksammann* and his deputy, the district treasurer, members of the district council, judges and alternates for the district court, a district secretary, and a constable. The *Bezirksgemeinde* is, in a small way, a district legislature, for it levies taxes, approves expenditures, and makes binding agreements; the officers elected by it act under its authority in district matters, and under the authority of the canton in general affairs.¹

This is an exceptional development of district government, the ordinary form not employing more machinery than that first described. There will be observed, however, all through the various systems

¹ Constitution of Schwyz, Art. 78-90.

GOVERNMENT IN SWITZERLAND

an intimate connection between local and general authorities. Along with the utmost freedom in the election of town and district officers there exists a general administrative supervision, which keeps the smallest hamlet in contact with the state government. The cantonal authorities may not dictate to town and district councils how in detail they shall manage their respective affairs, but they can enforce the general laws which regulate local government. For instance, in some cantons a community may not alienate any considerable amount of its domains without the consent of the Council of State. It is of importance that public property be regulated according to one general system. A community might vote away its real estate to a railway, or burden it injudiciously with debt, hence local action needs cabinet approval to see that the interests of the canton are not prejudiced. This at first sight might be regarded as paternalism, and the term would be justifiable did these acts occur under a monarchical form of government, but we must consider that even the Council of State is a democratic body, in the majority of states coming directly from the people; that the district authorities and all under them are likewise immediate creations of the citizens, and that this administrative inspection is only a slight interference with a degree of local autonomy hardly to be equalled outside of Switzerland.

CHAPTER VII

THE CANTONAL JUDICIARY

THE administration of justice is regulated by the various states without reference to each other or to the confederation, except that regard is paid to those general principles of fair hearing which are guaranteed by the articles of union. Nevertheless a similarity exists between the systems of all the cantons, and, although the course of litigation may vary and the tribunals bear different names, a careful provision for legal redress is characteristic of all. Each state has practically an independent judicial system of its own, for the Federal Supreme Court is not regularly a tribunal of appeal from the lower courts of the cantons: that is to say, it is not in strict organic connection with all the states in common, nor an outgrowth of the inferior judicial systems; for, although controversies between private parties are carried before the federal tribunal, they do not ascend by a graded avenue from the courts of the cantons.¹ The Federal Court deals with controversies between states, or states and individuals, and with a few selected cases between private persons or corporations; hence we may expect the beginning and the end of legal

¹ See Chapter XV., on the competence of the *Bundesgericht*.

GOVERNMENT IN SWITZERLAND

proceedings in the larger number of cases to be found within the borders of the canton.

General principles observed in the organization of all the systems are that criminal matters shall be considered by courts separate from those devoted to civil controversies, and that small matters shall not be carried to the higher tribunals. It is also largely true that all cases must begin at the bottom of the series of courts before going higher; hence we are interested in all the degrees of competency because of the importance of the first.

The person who stands at the foot of the judicial ladder bears the same title as his contemporary in America and England, but his duties resemble more his prototype of France. This is the Justice of the Peace.¹ He is called in many of the German cantons the *Vermittler*, mediator, because his duties are to effect, if possible, a settlement between the parties before proceeding to trial. Hence the right kind of a Justice can be an exceedingly useful citizen, and by his tact and good judgment may not only promote peace and goodwill in society, but acquire wide personal influence in his community. In order that there may be an opportunity for reconciliation, a number of the cantons provide that every case must first be heard by the Justice, though in others this court may be waived by consent of the parties. If he fails as an arbitrator he sits as a magistrate. As such he determines finally all suits involving small amounts

¹ Juge de Paix, Friedensrichter.

THE CANTONAL JUDICIARY

and punishes small misdemeanors. The Justice's court is a widespread institution, for, except in Geneva and Baselstadt, every community or small district possesses one of these peacemakers.

Interesting facts are revealed in the annual reports of the various cantonal judiciaries respecting the number of cases brought before the *Vermittler* and the number settled without further trial. The Justice is entitled to small fees whether he acts as peacemaker or magistrate, so there is no inducement to foment quarrels. Consequently many disputes which might have been carried to higher courts are settled by mutual agreement and the community relieved of part of the burden of litigation.

There are also in some places small courts of more than one member, *Untergerichten*, existing, perhaps, side by side with the Justice of the Peace. In Outer Appenzell, for instance, this tribunal is called the *Dorfgericht*, village court, and consists of three members who meet once a month, decide all cases involving less than one hundred francs, and punish small offences.

For civil cases of greater importance, the District, which we have just been considering from the administrative standpoint, becomes also the territorial basis for a tribunal of justice. This court is known as the *Bezirksgericht*, *Amtsgericht*, or by whatever name the District is designated, and consists of a bench of judges, from five to seven in number, elected usually by popular vote for terms

GOVERNMENT IN SWITZERLAND

of about four years.¹ Of these judges one is made president of the court, directs the work of his colleagues, and has himself an individual jurisdiction over certain police matters and small suits which might come before a justice of the peace. Above this court stands the *Kantonsgericht* as a forum of last resort within the state. This also is a plural tribunal, the number of judges varying from seven to thirteen, and the length of term from one to eight years. Besides hearing appeals from the lower courts, this Cantonal Court exercises a certain supervision over the administration of justice throughout the whole canton, and in many states makes an annual report to the legislature on the condition of that branch of government. It is a distinction worthy of notice that the superior court is usually elected by the legislature, while the district tribunal is chosen by popular vote.

Criminal matters are not brought before the civil courts, but special tribunals are provided for each district.² Appeals, however, after the facts have been established in the lower court, can be carried up to the Cantonal Court, where usually a committee or chamber of judges acts as a criminal court of last resort. Juries are employed in the lower criminal courts in some of the states, but they do not bear the familiar American and

¹ The terms vary in the different states from one to eight years, but the greater number have three, four, or six.

² Except for small misdemeanors and police offences, which are punished by magistrates.

THE CANTONAL JUDICIARY

English aspect; they resemble those of France. Trial before a body of one's peers is customary only for crime, not for the settlement of civil disputes, and the number of men in a panel is apt to be six or nine oftener than twelve. The functions of the Grand Jury, as found in English and American practice, are performed by special "courts of instruction," or by committees of one or more judges of the higher courts acting as such. This court of inquiry informs the public prosecutor, *Staatsanwalt*, of the criminal matters which should be tried, and the latter conducts the cases for the state according to regulations which vary in different cantons.

At first sight there appears to be a lack of that popular element which, under the jury system for all classes of trials, civil as well as criminal, seems to bring the administration of justice out of the realm of books into that of everyday life and common sense. When more closely considered, however, it becomes apparent that the courts of Switzerland are in reality strongly democratic institutions. When one begins to count one finds that the lower courts contain, ordinarily, about half as many judges as there are members of an English jury; that they are elected by popular vote every few years, and thus do not get out of touch with common feeling; having, moreover, an advantage in legal training and forensic experience which the average jury may never hope to obtain. These are distinct improvements in the settlement

GOVERNMENT IN SWITZERLAND

of civil questions. Judicial offices share with others the effect of opposition to life tenure. The people seem unwilling to surrender the opportunity to recall a public servant, even though willing to keep him in service. Practice is, however, better than precept in Switzerland, for judges do not change as frequently as one might think.

The position of the inferior judiciary in respect to the interpretation of the constitutionality of law is similar to that established for the Federal Tribunal. Contrary to the practice of American courts, the Swiss cantonal tribunal does not try the acts of legislature. No court can set aside a statute because of disagreement with the state constitution, because the legislature is regarded as the final authority upon its own act. The advisability of this principle is commented upon in connection with federal legislation,¹ so that no further expression of opinion is necessary, except to observe that in the canton the facilities for changing law are even greater than in the confederation, it being possible to remodel the constitution on demand, and by a process occupying but a few months at most. Hence it would seem that popular rights would be better served if the interpretation of law were taken out of the hands of the assembly and left to a tribunal which is accustomed to weigh well the meaning and intent of words.

It may be said, on the other hand, that the people so often pass upon the work of their legislators

¹ Chapter XV.

THE CANTONAL JUDICIARY

that all laws become in a sense a part of the constitution. If this were absolutely true there would be less need of judicial review of legislation by representatives, yet it might not be a bad thing to permit the courts to decide whether the people themselves had kept within the general principles established by their own act in a written constitution.

Special courts for commercial suits (*Handelsgerichte, tribunaux de commerce*) are to be found in Zürich, Aargau, and Geneva. These are composed of one or two regular judges, assisted by two to five merchants, who are supposed to have expert knowledge of such questions. Under given conditions appeal may be carried to the regular courts. In the other cantons commercial controversies are tried in the ordinary civil courts. In all cases due respect must be paid to the national bankruptcy act by which uniform principles and procedure have been introduced.

Tribunals of Industry (*Gewerbegerichte*) are established in nine cantons for the settlement of disputes between employers and employees. These are composed of persons of both classes and are remarkable for the rapidity and cheapness with which they act. Only a few days are necessary between citation and judgment, and the regular costs are either reduced or made entirely free to both parties.¹

¹ Schollenberger, "Verwaltungsrecht," I., 287.

CHAPTER VIII

THE PUBLIC SERVICE IN GENERAL

IN more than half of the cantonal constitutions a prominent place is given to the statement that "the legislative, the executive, and the judicial powers are, as such, to be kept separate." Sometimes the expression is more emphatic, but the fulfilment of the law is everywhere equally peculiar. So far as the persons who serve the state are concerned, the separation of departments is, to a large degree, consistently carried out; judges do not act as governors, nor do legislators actually execute their own decrees; but we have seen how frequently the executive department, as such, takes a hand in the formulation of law, and how the legislature often elects the administrative and judicial officers, and persistently inquires into their conduct whether it elects them or not. The legislature is also in certain cases a court of law, and the executive council is likewise a forum for administrative disputes, if for no other. No average statement can be given as to the amount of separation of powers, or as to the extent to which they assist each other in the various cantons. We can, how-

THE PUBLIC SERVICE IN GENERAL

ever, see that these inconsistencies are, for the most part, in favor of, rather than against good government. We may demur at the mixing of legislative and judicial functions in the same body, but must admit the usefulness of the work of the administration in the formulation of law. It would have been better, perhaps, not to put so broad a statement in the constitutions, and to have declared definitely where the lines should not cross.

Another Swiss view of the question of "incompatibility" which is rather striking to the foreigner, is the prejudice against the admission of relatives to the same councils or boards of authority. It is somewhat amusing to find it provided by fundamental law that no father and son or son-in-law, no brothers or brothers-in-law, no uncle and nephew, nor even, in some cases, more distant relatives, shall be elected at the same time to the executive council of the state or to the village board of aldermen. The historical reasons for this sentiment are discussed in the chapters on Federal Government. In canton or nation the practice is a survival for which there is probably at present little reason. There was a time when such prohibitions were vitally necessary to prevent the formation of family oligarchies. The greatest injury that cumulation of offices in the same family could now bring to a community would be some temporary advantage in the use of the common lands or some small jobbery in contracts.

Of the public service of the cantons, it may be

GOVERNMENT IN SWITZERLAND

said, in general, that it is well performed. Owing to the short intervals within which officials must submit to reëlection, such a thing as bureaucracy is almost impossible. Yet, while a popular control of conduct is thus maintained, the continuous election of faithful servants is the rule. Rotation is apt to take place in the higher administrative offices, and in the lower, long-continued service. The salaries paid are small, and members of many local boards must serve gratis, receiving their satisfaction in the esteem of their fellow-citizens.

There seems to be a proper estimate of the relative value of the different branches of administration, for, in general, the judiciary remains by law in office longer than political officials. In practice, also, clergymen and teachers are given permanent tenure, though only one cantonal constitution directs that these functionaries shall be appointed for life.

Civil service pensions are granted in Geneva and Basel-City. In Geneva this is practically a system of old age insurance, obligatory upon all officials and sustained partly by their own contributions and partly by the state treasury. Compulsory life insurance on a similar plan is supported by four other cantonal governments.

In many cantons, acceptance of certain offices, usually local, is obligatory. For instance, the constitution of Luzern¹ declares that citizens are, as a rule, bound to accept those offices which are filled

¹ Art. 13.

THE PUBLIC SERVICE IN GENERAL

by direct popular election, the duty, however, being limited to one term of service, with exemptions for age and disability. "Compulsory service," says the Local Government Act of Zürich, "is maintained principally for the benefit of the smaller communities, which, without this means, would find it impossible to fill their offices acceptably."¹ Responsibility for the conduct of office is provided for, in the first place, by taking oath on entering upon its duties, and, secondly, by liability to suit for damages. This liability is shared by the state when it accepts the action of the official as its own. Defalcations are extremely rare. Switzerland is so small that serious corruption is almost out of the question. Every public man is so well known to everybody that, even if the desire existed, the misuse of funds or the acceptance of bribes could scarcely go unnoticed.

¹ Gesetz betreffend das Gemeindewesen, 27 Juni, 1875. Art. 214 (p. 78).

[CHAPTER IX

CANTONAL FINANCE

IT is difficult to make any general statement regarding the financial administration of the Swiss cantons and communities which would prove true in all cases. So manifold are the methods employed and so various are the conceptions of the duty of the state, that a view of the whole subject could be gained only by giving a full description of the financial situation of each canton and village; but it must suffice here to describe a few of these, and to point out certain principles and tendencies which have more or less general applicability.

As in the United States, there is a division of the burden of taxation and of management of expenditure between the federal, the state, and the local governments, but the relations of state and local finance differ from the usual American system, in that there is no territorial division having financial functions between the canton and the village. Except in one canton, the *Besirk* has neither taxing power nor public funds, as in the case of the county in the United States. The state and its smallest units divide between themselves the responsibilities of public finance. Their spheres are by no means sharply defined. Sometimes the can-

CANTONAL FINANCE

ton and the confederation join hands in the support of an institution or public work, as, for instance, the Polytechnic School at Zürich; sometimes the confederation and the community share the burden, as in the maintenance of a military parade-ground; and again the canton assists the towns, as in the matter of public roads and pauperism.¹

The sources of public income are equally various and complex. While the same items may appear as resources in many or all of the states, the beneficiaries may be widely different. As in the case of water privileges, or hunting and fishing licenses, sometimes the income accrues to the state and sometimes to the community; hence any general inferences as to the results of a given class of taxes would be difficult to draw. Common sources of revenue, however, found in some form in almost every canton, are: 1. State property, domains, or funds. 2. Royalties and monopolies. 3. Miscellaneous indirect taxes, licenses, stamp-duties, fees and fines. 4. Direct taxation of property and income.

Domains may consist of forests, cultivated lands, or city property, and are of importance both in state and local finance. The income from such resources sometimes takes the form of rents, at others accrues indirectly as a public utility; sometimes, in small communities, it ministers to the private comfort of citizens in the right to free firewood and pasture. Historically speaking, the

¹ Orelli, "Staatsrecht," 117.

GOVERNMENT IN SWITZERLAND

domains are the basis of existing public property in Switzerland, for in the beginning the *Mark*, or common land, was the sum and substance of state and village economy; later on, other sources of revenue, tolls, privileges, or tributes, created surpluses which became cantonal funds. In the middle ages, flourishing cities, like Zürich and Bern, not only gained sufficient revenue to pay current expenses, but piled up huge treasures, and enlarged their territories by purchase or the forfeiture of mortgages. Under the régime of the Helvetic Republic and during the supremacy of Napoleon much of the ready cash was swept away, and the states were obliged to begin their accumulations again. At present the combined *Staatsvermögen*, or public fortune, domains and funds together, is a considerable factor in the financial system of every canton.¹ The total amount of state property in the whole confederation, omitting federal funds, has an estimated value of many hundred millions of francs. Beside this there are, especially in the northern cantons, many special funds, administered for public or charitable purposes, which in reality should be considered available resources in the general economy of the states. In Schaffhausen

¹ In Bern, the largest and most populous canton, the value of the real estate belonging to the state in 1897 was 1,463,851,809 francs, as against 2,701,160,342 francs valuation of taxable private property (Bern Statist. Bureau). Basel-Land, on the other hand, is a small canton of about 65,000 inhabitants, and in 1898 had a fortune of 2,362,736 francs, an increase of 145,747 francs for that year. The whole amount of state income was 1,661,611 francs.

CANTONAL FINANCE

these amount to ten millions of francs, and in Zürich exceed twenty millions.¹

Among monopolies, the spirit industry stands foremost in respect to the extent of its application and magnitude of financial results. This will be described in connection with Federal Finance, but it must be kept in mind that notwithstanding the centralized system of administration it is essentially a state revenue, and in each canton a most important financial factor. Now that the expenses of assuming the monopoly and the various indemnifications have been provided for, the income from the liquor industry will probably grow larger and larger.

The sale of salt is a government monopoly in every canton in the confederation, whether the production be domestic or foreign. The manufacture is in all cases undertaken by private companies, but distribution is carried out by the state. The general principle upon which this monopoly rests is, that all mining operations are *Staatsregalien*, privileges of the sovereign, and subject to royalty. In earlier days one or two states operated salt mines and wells on their own account, but these were afterwards assumed by companies, and now the actual mining is in all cases performed by private enterprise, under state charters or concessions. Only three cantons, Aargau, Basel-Land, and Vaud, have within their own territory salt-bearing wells of any account, the natural formation of other regions not being suitable. Hence the monopoly

¹ "Volkswirtschafts-Lexikon," II., 174.

GOVERNMENT IN SWITZERLAND

is a different matter in the various parts of the country; states having no wells standing in quite another economic relation to the subject from that occupied by producing cantons.

The original cost of salt naturally makes a difference in the revenues derived from the sale, and various prices might consequently be expected to rule in different states; but the chief causes of variance are the different ideas of the duty of the state toward the salt-consuming public. In some cantons the matter is viewed entirely from the fiscal standpoint, and as much revenue is derived from salt as the traffic will bear; in others the monopoly is regarded simply as a means of cheapening the commodity, while still other states expect moderate prices and moderate revenues. Aargau, being favored by nature with salt-formations, exacts from the manufacturers the whole supply needed in the state, *gratis*, and in addition a money payment of 45,000 francs.¹ In other words, the company may make and sell all the salt it wishes after it has given the government enough to supply the state demand and a liberal cash bonus. Basel-Land receives one-tenth of the production of its wells, or, if this exceeds the amount needed for home consumption, all the salt it wants and the balance in cash.² Six of the

¹ The income from the monopoly in 1895 amounted to 351,322 francs.

² The gross income in 1895 amounted to 155,131 francs, or about 11 per cent of the total income.

CANTONAL FINANCE

other cantons draw their supplies in part, in one case wholly, from foreign countries; all the rest obtain salt from the Rhine wells, so that companies of Aargau and Basel-Land have nearly a monopoly of the Swiss supply. This condition of the market is brought about by an understanding with foreign manufacturers, according to which the Swiss members of the ring agree not to sell in German or French territory, provided they are let alone in Switzerland. These agreements, however, are terminable at comparatively short intervals, and the nearness of foreign wells does not permit much unjustifiable increase of price.

As a financial expedient, the salt monopoly is a question of difference between cost-price to the state and selling-price to the public. To all states outside the producing cantons the price is uniformly 5 to 6.5 francs per 100 kilogrammes, but the selling-price varies from 10 to 20 francs per hundred.¹ Where the monopoly is regarded as a tax the prices are higher. In Bern, the largest consumer of salt, the price in 1896 was 15 francs per 100 kilogrammes, and the net profits 795,359 francs, or 1.45 francs per inhabitant. Zürich consumed about one-half as much as Bern, and sold salt to the public one-third cheaper. The result to the state was a far smaller profit, but the people were taxed only 50 centimes a head. Uri is one of the smallest cantons, but the citizens paid a

¹ Cost about 50 to 65 cents per 100 pounds. Selling-price at wholesale varying from \$1.00 to \$2.00 per 100 pounds.

GOVERNMENT IN SWITZERLAND

profit to the state of 2.40 francs each. Taking the whole confederation together, the net returns to the cantonal governments amounted, in 1896, to 3,553,298 francs, or an average taxation of 1.12 francs per inhabitant. The salt is distributed at wholesale from state magazines located at convenient intervals, while household supplies are obtained through specially appointed grocers, or through the ordinary channels of retail trade at a very slight advance.

In comparison with salt, the other state monopolies are meagre sources of income. The mineral products of Switzerland are few, and found only in small quantities. There is but one coal mine in the whole confederation which is productive of royalties. This is in Zürich, and the tax on its output amounts to only a few hundred francs. A cement factory, however, in connection with the mine showed itself capable of a respectable industrial profit to the canton. The canton of Glarus is the owner of a slate mine, but this is more of a convenience than a source of revenue.¹

Following the example of the confederation as wholesale monopolist of spirituous liquors, the city of Basel has assumed the monopoly of retail distribution.² This covers the high grades of alcoholic beverages, but not alcohol for use in the arts, nor the weaker spirituous and malt liquors, the sale of

¹ "Volkswirtschafts-Lexikon," II., 157.

² Ordinance of April 4, 1888, "Volks.-Lex." II., 157. See Chapter XIX., Federal Finance.

CANTONAL FINANCE

the latter being regulated by a system of licenses. For the fine distillations there are government stores, which are to be established according to the demand, but which may not exceed twenty in number. These are furnished by the cantonal finance department with liquors obtained from the federal administration, and at a price somewhat in advance of that paid to the confederation. The further preparation of liquors for drinking purposes lies in the hands of the storekeeper, but under official control. The dealer is not a government officer, but gets his profit by selling at market prices, and gives bond to the state that the place will be properly conducted. Statistics are not at hand sufficient to show the permanent results of this experiment, but the attempt to carry the monopoly into the details of distribution will be well worthy of study in the future, especially from the sociological standpoint.

The list of cantonal monopolies should include railways, but not enough of them exist to affect the finances of the country to any great degree. Bern was at one time a large railway owner, but her lines, after falling back into private hands, have now come into possession of the confederation, leaving only two small lines in Neuchâtel and the street railways in Basel¹ to represent the state idea.

Royalties from fishing and hunting privileges

¹ This public convenience in Basel is purposely so managed that "the enterprise shall maintain itself out of its income and bring the state neither loss nor gain."

GOVERNMENT IN SWITZERLAND

are sometimes demanded by the canton, sometimes by the community, hence their place is somewhat difficult to fix. Water-power, or the use of public streams for mills and factories, is taxed in eleven cantons; in four of these for the benefit of the state treasury.¹ The total revenue derived from the use or taxation of natural privileges, except from the production of salt, is but a small item in the cantonal budget. From mining, water-power, forestry, hunting, and fishing, less than 500,000 francs is received in the whole confederation.

As an item of taxation, or perhaps as a public convenience, rather than a source of income, the subject of State Fire Insurance ought to be mentioned here. In eighteen cantons, government takes the place of private insurance companies, receiving premiums and paying losses resulting from fire.² This system began in Switzerland in 1808, and nearly all of the states which accept fire-risks adopted the idea during the first four decades of this century. In most cases insurance in the state company is obligatory; all buildings above a certain small value, except those involving extraordinary risks, such as chemical factories, powder-mills, and the like, being subject to enrolment

¹ Schollenberger, "Die schweiz. Freiheitsrechte," p. 9, gives, under the head of Handels- und Gewerbefreiheit, a summary of all taxes and restrictions on trade and industry in the various cantons.

² The exceptions are Uri, Schwyz, Obwalden, Inner Appenzell, Ticino, Geneva and Graubünden.

CANTONAL FINANCE

and taxation with the government premium, to the exclusion of private enterprises of the kind. In certain cantons, especially those where vineyards are abundant, insurance against damage by hail storm is assumed by the state. Participation in this has been quite general, and the results satisfactory both to the governments and to the protected.

Personal service in fire companies is a form of taxation which is obligatory in the majority of communities. It is surprising to find in cities of the size of Zürich and Basel that all citizens between the ages of 32 and 44 years must be enrolled in the fire brigades and are held responsible for at least six years of service. These cities are divided into districts, and the voters are obliged either to accept active service or pay a tax instead. This gives the poorer citizen an opportunity to work out his fire tax, but the efficiency of the service must be feeble in comparison with a paid department. The towns are, however, so solidly built that fires are comparatively infrequent, and the voluntary system may be sufficient for a time.

Government banks are maintained in a large majority of cantons. These are regarded both as financial enterprises and as social conveniences for the benefit of the borrowing class. Most of them are managed on state account, yet others are stock corporations, sustained by government guaranty. There are also many small banks, chiefly for savings deposit, which are operated

GOVERNMENT IN SWITZERLAND

under the guarantee of the communities in which they are situated. Banking, under the present federal constitution, cannot be made a government monopoly, for the article prohibiting the confederation from assuming the sole right to issue bank notes has been held to prevent also any state from monopolizing the issue of paper money within its own limits. Consequently the state goes into banking as a business enterprise rather than as an exercise of its sovereign taxing powers.

The miscellaneous taxes which are laid upon the small transactions of life display a wide variety of principles as well as practical applications. The canton is sometimes the beneficiary of a given tax, sometimes the community, the large cities being especially apt to multiply these financial rivulets. Of those in which the state government is chiefly concerned, the taxes upon exchanges of property are the most productive, but are closely followed by the market and peddling licenses. In regard to fees and fines, three different methods obtain. In a few states all court and administrative fees fall into the public treasury. In other cantons there is partial adoption of this rule, particularly in regard to judicial and notarial fees. In certain others the fees are retained by the officials in place of fixed salaries. An enumeration of the various taxes of this class would exhibit a curious mixture of sumptuary and fiscal expedients, but would not allow us to draw any safe general conclusions as to their extent or effect.

CANTONAL FINANCE

DIRECT TAXATION

Behind all these indirect sources of revenue stands the power to call upon the citizens to contribute directly from their wealth for the good of the state. Some of the old community laws used to say that if the revenues from the common property did not suffice for schools and public purposes, the *deficit* would be made up by taxation.¹ Perhaps this is the explanation of the direct contribution everywhere in Switzerland, but at present this so-called deficit is usually larger than the other portion. It is, at all events, the most conspicuous in the minds of lawmakers and taxpayers.

As to the various methods of taxation, it is to be observed that a Property Tax exists in every canton; that is to say, an assessment in some form or another upon the total estate, real and personal, may be found in all parts of Switzerland. In a very few states there is a Land Tax (*Grundsteuer, Impôt Foncier*), under which the soil pays a tax fixed by exact survey and appraisement according to productivity. Income taxes are imposed by various methods, side by side with the property tax, in the great majority of cantons. Poll taxes find a place in about half of the states, and the same may be said for the tax upon inheritances. A study of the list shows that the succession tax is

¹ More recently stated in Township Laws of Zürich, "Gesetz betreffend das Gemeindewesen," 1875, Art. 129.

GOVERNMENT IN SWITZERLAND

employed especially in those cantons which contain the important cities and, consequently, the busier and wealthier populations.

Conspicuous among property and income taxes, because of its regular and uniform recurrence, is the Military Exemption tax, of which one-half accrues to the confederation and one half to the canton. But, leaving this to be described under the subject of Federal Finance,¹ we shall find on further examination of these forms of direct taxation that in a large number of states the progressive system of assessment has been adopted to greater or less extent. In many cases both income and estate are taxed progressively, while in others property pays its simple proportion, and income is assessed according to an increasing ratio. Zürich, Basel, Vaud, Glarus, and Graubünden exhibit characteristic developments of the progressive system; the fundamental principles which govern its employment, as viewed by these democracies, being well expressed in the constitution of Zürich: ² "All persons liable to taxation must contribute to the support of state and community in proportion to the means at their disposal. The property and income tax is to be arranged according to classes on the principle of moderate and just progression. Property of small value belonging to persons unable to work, as well as that part of all incomes which is absolutely necessary to life, is exempt. The progression shall not exceed five times the simple rate in the case of

¹ Page 241, *infra*.

² Art. 19.

CANTONAL FINANCE

income, nor double the simple rate in the case of property. For local purposes, property can be assessed only proportionately."

Though not always expressed in constitutions, the other progressive states have followed similar principles, with variable regulations for exemption and assessment. In Graubünden, for instance, property-owners are divided into eleven classes, the first including all persons owning estates from 1000 up to 20,000 francs, the others following at intervals of thirty thousands. The tax on the first class is the first, or simple assessment; that on the second, one-tenth greater for every thousand, and so on upward.¹ Private properties below 1000 francs are exempt. The income tax is laid upon all earnings above 200 francs per year, except where the person owns taxable property, and earns less than 800 francs, and in a few other cases. The greater the income the higher is the rate of assessment, receipts from all sources except from agricultural pursuits being brought under the law.

It is beyond the scope of this chapter to attempt a detailed comparison of the methods of direct taxation employed throughout the confederation, or to explain the various economic effects. In regard to the progressive system, it is safe to say that it has met with the approval of the people wherever adopted, and is gradually gaining wider acceptance. This popularity is doubtless largely due to the fact that by this method a large number of

¹See Appendix, p. 333.

GOVERNMENT IN SWITZERLAND

small taxpayers can make a minority of rich men carry a great part of the burden. There is, however, a principle of justice in the idea that the wealthy man ought to contribute not only in proportion to his goods, but in increasing proportion as he becomes wealthier ; but no system of taxation has yet been invented which works perfectly, nor is there one which satisfies both government and people.

Swiss finances suffer from a disease not unknown in America, namely, undervaluation, or, plainly speaking, tax-dodging. The principle of self-assessment, or the listing of property by the taxpayer himself, is vigorously insisted upon, as if it were a natural right of man ; but, although the detection of fraud and punishment of obstinacy are placed in the hands of tax commissioners, the temptations to under-assessment are too great. Consequently, in many places rates are high, and in reality the pressure of taxation is heavy. This is especially true of the great industrial centres, where much more public money is expended than in the agricultural states. Hence there is more or less casting about for new financial expedients of an indirect kind, now that the alcohol monopoly has proved to be fruitful.¹ Indeed, an eye is turned upon the federal tariff to see if that cannot be stiffened somewhat for the benefit of the taxpayer. The burden of direct taxation *per capita* of population

¹ The alcohol dividend for Zürich alone in 1898 was 745,923 francs.

CANTONAL FINANCE

is not excessive, but this does not altogether reveal the weight laid on the persons who actually contribute. Although they have not reached a critical point, the questions of taxation are causing earnest consideration on the part of Swiss economists.

The support of local government is found chiefly in direct taxation. Many communities have funds and domains, but the income from these must be supplemented by contributions from the pockets of the citizens. Elaborate laws in many cases mark out the field to be occupied by town taxation, procedure and rates being made uniform by cantonal enactment. In Zürich, for instance, no progressive tax can be laid for local purposes, and the direct tax must everywhere be made in the proportion of one franc in the thousand of property, one franc on every household, and one franc for every voter. Towns and cities assist themselves further by means of indirect taxes, other than those levied for state purposes. Fees from public scales, slaughter-houses, baths, hacks, water-rates, funerals, and other minor matters contribute something to the general fund, but form, in proportion to the direct taxes, an unimportant source of revenue.

The purposes for which public money is expended may be sufficiently inferred from what has been said in previous chapters concerning the functions of state government, and from what follows in respect to local administration. Wide differences will be found, however, in the ideas prevailing in the various cantons as to what the duties of the

GOVERNMENT IN SWITZERLAND

state are in the matter of public expenditure. In the quiet agricultural states the wants of the people are fewer than in the active industrial centres.¹ On the whole, the expenditures of Switzerland are proportionately much less than those of neighboring states. This may be ascribed in part to the lighter military burden, in part to the fact that no monarchs and courts must be supported, and further, to the inclinations of the Swiss people for practical rather than ornamental matters. As in all other civilized countries the cities require large expenditures for sewers, lighting, paving, parks, quays, and so on up to the borders of luxury. These things are not obtained out of the annual budgets, but covered by loans. In Zürich the outstanding debt in 1897 was nearly 70,000,000 of francs or 328 francs *per capita*. Even the little canton of Inner Appenzell had its debt of 11 francs per inhabitant. The figures, as a whole, look rather formidable until

¹ The comparative table of expenditures, published in Furrer's "Volkswirtschafts-Lexikon," is instructive when considered in connection with the natural and commercial resources of the cantons. The public debts of the cantons in 1897 *per capita* in francs: —

Zürich	328	Freiburg . . .	205	Graubünden . .	209
Bern	119	Solothurn . . .	101	Aargau	145
Luzern	143	Baselstadt . .	418	Thurgau	32
Uri	84	Basel-Land . .	38	Ticino	285
Schwyz	35	Schaffhausen .	203	Waadt	258
Obwalden . . .	49	Appenzell Int.	16	Valais	45
Nidwalden . .	28	Appenzell Ext.	11	Neuchâtel . . .	408
Glarus	101	St. Gallen . .	85	Geneva	398
Zug	23				

CANTONAL FINANCE

they are reduced to dollars for comparison, and the further fact is noted that the rate of interest rarely goes above 3 per cent or 4 per cent.

The rugged nature of the country in certain parts requires extraordinary expenditure for roads. On through lines of communication the confederation lends its aid, but everywhere the Swiss have provided themselves with excellent roads and keep them in fine condition.

Hundreds of small towns are now lighted by electricity. The abundant water-power in the mountains is utilized for this purpose, and one is often astonished to find an obscure hamlet, hardly out of the age of tallow candles, brilliantly illuminated with incandescent or arc lights, fed by a public power house. It must be admitted that local expenditures are prudent and sensible.

CHAPTER X

COMMUNITY AND CITIZENSHIP

LOCAL government in Switzerland strikes root so deeply into the past that a brief examination into its history is almost necessary to a proper understanding of its present, and once we begin to trace back the course of institutional growth we shall discover that two lines of development have been followed, or better, perhaps, two points of departure have determined the direction of community evolution.¹ In portions of the country the agricultural community was the germ which grew in time to be the township and sometimes the state; in other places, it was the fortified castle.²

The neighborhood association of farmers in the old German *Mark* was governed by very simple

¹ The word "community" is used throughout this work in preference to "commune" because it is an English word and describes accurately the unit of local government. "Township" does not in every case define the situation, although frequently synonymous with "commune." The community is sometimes a village, sometimes an agricultural area, and sometimes both together; but in all cases it will be considered here as an organization of people, not a vague name for society in general.

² The question of original precedence between the *Markgenossenschaft* and the Manor need not be drawn into the discussion here. The agricultural community, roughly defined by a *Mark* or boundary, was present in Switzerland in the early middle ages.

COMMUNITY AND CITIZENSHIP

laws. At the stage of development at which we may begin with confidence to study the rural hamlet in Switzerland, each household probably owned a home, a garden spot close by, and a share in the cultivated fields and surrounding woodlands corresponding to its needs. Neither the arable lands nor the wild pasture and woods were permanently divided into individual shares. The fields were allotted to the families year by year, subject to rules of cultivation established by the community; one year spring grain, one year winter grain, and one year fallow, in regular rotation. The woods and pastures were not divided even so much as this, but each householder cut as much timber as he needed, and pastured as many cattle as he happened to have, without regarding any particular part as his own.

Even under these simple conditions some kind of community government would be necessary, and would gradually expand as population grew. The time of sowing and reaping must be fixed, the time for pasturing the stubble determined, roads mended, disputes settled, and many other matters, at first simple, but later more important and complex, resolved upon.

As time passed, the ownership of cultivated fields became fixed in private hands, but the common lands remained, as before, the common property of the village, and even to this day the *Allmend*, or public pasture and woodland, is a feature of many Swiss communities. The question as to

GOVERNMENT IN SWITZERLAND

who was a citizen and who might become such was not at first a serious matter. So long as there was plenty of land there was doubtless little difficulty in providing for new settlers, whether springing from the natural increase of population or coming in from outside. But there came a time when the citizen found that to admit new members to the community was to decrease appreciably his share of the common benefits, and barriers began to be placed against admission. A price, corresponding to benefits received, must be paid before membership in the village could be obtained, and this entrance fee became relatively very high. Participation in the government of the community also depended on the question of shareholding, and those who had been admitted by birth or by purchase to the benefits of the common lands were alone competent to vote on village matters.

Others were allowed to settle without full admission, but their position was strictly subordinate. As laborers and tradesmen such were tolerated, but they could have no share in the revenues or privileges of the common lands nor voice in administration.

Later still it came to be a custom also for settlers to purchase the right to live in the community without taking shares in the common lands or common revenues, and thus a status of citizenship was engendered, independent of the community proper, but giving voice in some part of its administration. These modern Metics formed the so-called *Hin-*

COMMUNITY AND CITIZENSHIP

tersässen and *Niedergelassenen*. So the result of growth to the old agricultural village was to superimpose through increase of population a complex, stratified citizenship upon what had been before a simple, almost private corporation.

The other point of departure in community development was the fortified castle, or *Burg*, which grew more easily than the country village into a municipality. About the strongholds of the feudal magnates there gathered the houses of their subordinates; soldiers' families, artisans, agricultural laborers and others, until these forts became centres of towns of considerable size. Endowed with rights of self-government and many other privileges by kings and barons, in return for loans, or for their allegiance in times of difficulty, they rapidly gained in population and wealth. The inhabitants of the *Burg* became the *burgenses*, or burghers, and advanced so much earlier to knowledge of the rights and duties of citizenship, that in time the name came to be applied to all citizens, whether dwellers in towns or open villages.

For the control of a walled town there must of course be maintained a stricter discipline than for a community of farmers. Regulations for the call of the militia, sentry duty, fire watch, street patrol, markets, and a multitude of other matters would need the attention of the citizen, and these demands increasing in extent and intricacy, would teach perforce the art of municipal government. Hence, when we come down to modern times and

GOVERNMENT IN SWITZERLAND

see rural communities leave the primitive agricultural condition and adopt more uniform and improved systems of administration, we find that the old Burgs have been a long way in advance, and furnish the ideas which are followed by their neighbors.

Although we are at this point concerned only with the development of the community, it will be well to observe that, in the more sparsely settled districts, the ancient *Markgenossenschaft* became the state by accretion. Small communities joined together to form the territorial community, or *Landesgemeinde*. On the other hand, the *Burg* developed first into the city and then into the sovereign state. Thus Bern, Zürich, and Luzern, especially during the oligarchical period, while possessing large outlying territories, were essentially city governments. Only in modern times have these relations been adjusted.

We need not follow step by step the long line of changes which have little by little overtaken the Swiss community. The prevailing characteristic was always local independence, with very slight interference on the part of the state. The passage of the Helvetic Republic left very little permanent trace of itself on community government. The cantons became for the time departments, and the cities and villages sub-prefectures, all ruled from above; but as soon as the pressure of France was removed, the old state of things returned. Gradually, under the impulse of the new political ideas

COMMUNITY AND CITIZENSHIP

which brought about the constitutional reforms of 1830 and later, the modern form of community government has emerged from the shell of the old.

The matter of citizenship, however, cannot be thus summarily dismissed, if we desire to understand the present conditions. Switzerland is, in some respects, unique in its regulations respecting the domicile and civil capacity of its subjects. First, the citizen is a member of a certain community, no matter whether he lives in it at the time or not. Secondly, he can never lose this citizenship without the consent of his native state. Voluntary abandonment counts for nothing unless this consent has been obtained. There is a general citizenship of the canton or confederation, distinct from local citizenship, but it cannot exist by itself. Membership in the state depends on membership in a community.

We are obliged to glance at the history of the country to explain these phenomena, and, strange to say, we find these peculiarities due largely to the methods adopted in the sixteenth century to eradicate vagrancy. In other words, the tramp question at that early day determined the citizenship question of our own time.¹ During the middle ages the poor had been the care of the church. Numerous monasteries and ecclesiastical foundations had furnished shelter and food, sometimes

¹ Other complications also arose in cities from conferring citizenship upon persons living in other places.

GOVERNMENT IN SWITZERLAND

temporarily, sometimes permanently, at all times indiscriminately, for the unfortunate and shiftless. The Reformation, however, by the secularization and abandonment of many of these institutions, caused for a time great confusion in the matter of poor relief, and the consequence in Switzerland was that the country was filled with a horde of vagrants, some deserving, some unworthy, who gained their living at the expense of the well disposed. They naturally flocked to those cantons where the cloisters were still maintained, and these, not being in a mood to bear the double burden of both Catholic and Protestant tramps, attempted to drive off the latter, and, in general, to shift the pauper class from one canton to another. This, however, led only to recrimination, and the vagrancy question was as far from settlement as ever. Foreign beggars also were a source of great vexation, since they stole the bread out of the mouths of the Swiss poor. In 1551 the Federal Diet took hold of the matter in earnest, and passed a law to the effect "that every town, also every village and parish, should sustain its own poor people according to its ability." As a means of getting rid of the foreign vagrants it was resolved to give them no licenses to beg, and as for the native poor, they were to be distributed *pro rata* among the states and communities.

Following the lines laid down by the Federal Diet, the various cantons from time to time enacted laws insisting upon local support of paupers, until

COMMUNITY AND CITIZENSHIP

it became very important to know where a man belonged, and the question as to who should maintain a person when he fell into poverty became completely fused with the question of citizenship. Great jealousy was exhibited by communities toward new arrivals. Persons who moved from one place to another were for a long time obliged to give bond that they would never become a charity burden in the parish of their adoption, and when they did reach this unfortunate condition they must return to their town of origin or be supported by it.

These regulations passed through many phases in the course of three centuries, the constant aim being to establish every person in some locality which he must regard as his "home," *Heimath*. Yet notwithstanding these efforts there grew up a class whom no place would acknowledge as its own — the *Heimathlosen*. They wandered about from place to place, sometimes in great bands, as tinkers, or basket-weavers, or gypsies pure and simple, until they became in the early part of this century a matter of serious concern to the confederation. They were, however, at last taken hold of, the vagrants assigned to some definite community as citizens and compelled to look there for support.

But it is manifestly impossible, even if it were not unjust, to keep people for any great length of time in one place. Occupation and desire for improvement cause population to change constantly. Modern industrial life demands it, and comparatively

GOVERNMENT IN SWITZERLAND

few people live all their lives in one town. Hence in Switzerland the mediæval hindrances to settlement and change of residence have been so far removed that no good citizen can be prevented from adopting any community whatever as his place of abode.

The federal constitution guarantees to every Swiss "the right to settle in any place within Swiss territory if he possess a certificate of domicile (*Heimathschein*) or testimonial of like import."¹ In exceptional cases this certificate can be refused to persons who have lost their civil rights through sentence of a criminal court, and can be taken away from persons frequently subject to conviction of crime, or who persistently require poor relief which the community of origin refuses to furnish. In cantons where parish poor relief obtains it may be required that the newcomer be able to work and that he has not been in any continuous way dependent on charity, but no bond or other special burden shall be demanded, nor can he be taxed differently from other citizens. A federal law establishes the maximum payment for admission, which is a moderate notarial fee. Nevertheless the regulation holds good that the "home" canton cannot thus lightly be changed. Unless he buys himself a new *Heimath* at considerable cost, the citizen must get his poor relief at the town of his nativity, no matter where he spends his days of affluence.

¹ Art. 45.

COMMUNITY AND CITIZENSHIP

Hence there are to be found in every community different classes of citizens living side by side. *Bürger* are those who by nativity or by purchase have acquired the right to vote on all matters which come under the control of the community, and are entitled to support when reduced to poverty.¹ *Niedergelassenen* are those who have moved from other places and have been duly accepted as residents. These have a voice in all matters except those touching the common lands and poor funds, and obtain no use or dividends arising therefrom. They exercise the rights of cantonal and federal citizenship equally with the *Bürger* but have fewer privileges in the commune. Being born in a certain village does not necessarily make one a full citizen of it. The parents must have been also full citizens. The children of *Niedergelassenen*, as a rule, must remain in the same political state until they purchase a share in the close corporation.² In case they need poor relief they must look to the community where their fathers or grandfathers were citizens. *Aufenthalter* are persons who have simply the privilege of residing in the community without political rights.

Upon this basis, therefore, the framework of local government has been built. Community life expresses itself in terms of citizenship, and allow-

¹ Acquired in the case of women by marriage.

² In some places, residence for a long term of years entitles a *Niedergelassener* to full citizenship without purchase.

GOVERNMENT IN SWITZERLAND

ing for a multitude of variations in minor details, exhibits the following classification :—

The Political Community, variously known also as the Resident Community (*Einwohnergemeinde*), Municipality, or Parish (*Kirchgemeinde*), but always with the political idea uppermost, is a territorial unit which corresponds to the American township. It is a convenient subdivision for the exercise of suffrage and of those local rights which are guaranteed to every citizen. Its membership includes every qualified voter residing within its limits.

The Burgher Community (*Bürgergemeinde, commune bourgeoise*) is usually bounded by the same lines as the Political Community, but includes as participants only full citizens. These are, of course, also political citizens, if residing there, having the additional advantages of *Heimathrecht*; but many members of the Burgher Community may not live in the place at all. They may never have even seen it, but may, if they choose, claim a voice in its administration, the duties of which include the management of the poor funds, and frequently the guardianship of orphans.

Within these same limits there is another community which no longer has a public character as a subdivision of the state. This is what we may call the Commons-Corporation,¹ or the people who have the right to the use and management of common pastures and woods. This is now simply a

¹ *Corporationsgemeinde.*

COMMUNITY AND CITIZENSHIP

private corporation enjoying hereditary rights, and in most places is all that remains of the original *Markgenossenschaft*. The Political Community is the most conspicuous unit of civic life, but it is also the most recent. As modern industrial life began to make itself felt in Switzerland, and transportation and communication became more rapid and easy, the character of population in towns changed very decidedly from the mediæval condition. A large part of every community came to be residents (*Niedergelassenen*) instead of citizens. It was found that an important class would be deprived of political rights unless provided with some means of local government in which they could participate. Hence came about gradually the institution of the inhabitant, or political community. The organization of the Burgher Community remained intact within this political community for the benefit of those who by inheritance or purchase were entitled to the privileges of the common lands, and for the purpose of maintaining the fixity of poor relief. The administration of this portion of the community included at first all the common lands, the regulation of their use, and the division of profits; but as villages grew, a three-sided conflict became more and more evident between the interests of the old original families, the adopted full citizens, and the political residents.

The first would find their dividends diminished by too frequent admission of new shareholders.

GOVERNMENT IN SWITZERLAND

The larger the place became the more evident was it that the products of the commons should be used for public expenses, especially poor relief, and when additions were made to the domains it might be difficult to decide whether these were to be used for general or private gain. Residents, on their side, would naturally want to see the dividends expended upon as many public interests as possible. So in quite recent times a division has been going on between the old vested rights of the *Allmendgenossen*, or time-honored shareholders in the *Mark*, and the less ancient Burgher Community, which represents the side of poor relief. It will be understood that the former are still included in the Bürger class, but the confusion of private and public rights has been settled by a division of property.

The *Allmendgenossen* are now as a rule simply corporations of private citizens whose rights are recognized and guaranteed by the constitution. The Burgher Community also possesses funds and domains, but these are destined primarily for the support of the poor, and the rule is sometimes laid down that there shall be no division of proceeds so long as taxes are levied in the community for that cause.

Within the commune there also exist one or more School Communities, or School Districts. These also, within the limits of law and constitution, are self-governing corporations on all matters relating to local education. The Parish, or ecclesiastical

COMMUNITY AND CITIZENSHIP

district, as a territorial division varies in extent, sometimes including more than one political community, sometimes forming only a part of one. This church community includes all persons of the same confession residing in its limits, the only differences in faith recognized being Catholic, Protestant, and Israelitish. There may be, accordingly, three different *Kirchgemeinden* in the same place. The Catholics may meet together to manage their own affairs as one body, the Protestants as another, and the Hebrews as another; no person having a vote in a communion other than his own.

ORGANIZATION OF THE COMMUNITY

The highest authority in local affairs is the town-meeting, the *Gemeindeversammlung*. For the Political Community this consists of all the resident citizens, *Bürger* and *Niedergelassenen*, who meet together on stated occasions, or at call, to elect the village officials and to determine questions of importance. Within the competence of the Political Community lie all matters relating to local police, sanitation, fire extinction, roads, pavements, and the like. Upon such questions the town-meeting forms resolutions, votes, and hears reports. Into matters touching the adoption of citizens, the management of the purely corporative domains and funds, or other questions belonging to the full citizens, this assembly does not enter. These are duties of the *Bürgergemeinde*. But

GOVERNMENT IN SWITZERLAND

the political or inhabitant assembly already includes the full citizens, hence it is usually the custom for this body simply to resolve itself into a *Bürger-gemeinde* by not allowing the *Niedergelassenen* citizens to vote on matters which belong exclusively to the inner circle. Still the political assembly has by far the more important rôle to play. In it take place the elections federal, state, and local; it is the local unit of state government and the residuary legatee of all powers not granted to other authorities.

Its procedure is simple and highly democratic. It meets either at the call of an executive council of its own election, or in pursuance of adjournment, and, as a rule, on a Sunday or holiday. Its presiding officer is sometimes the mayor, sometimes a special chairman (*Gemeindepräsident*). Care is taken that only voters shall sit in the body of the assembly, it being a rule in Zürich that the register of citizens shall lie on the desk for inspection. Tellers are appointed by vote, and must be persons who do not belong to the village council, since that is the local cabinet which proposes measures for consideration. Any member of the assembly may offer motions or amendments, but usually these are brought forward by the town council, or at least referred to that body before being finally voted upon. A careful record of proceedings is kept by the town clerk.

The *Gemeindeversammlung* of the Political Community elects the principal town officials. These

COMMUNITY AND CITIZENSHIP

are the village mayor (*Gemeindeammann*, *Gemeinde Hauptmann*, *Syndic*, *Maire*), the council (*Gemeinderath*, *Conseil Municipal*), the town clerk, and such other minor officers as are not left to the choice of the town council. Practice differs respecting the election of administrative officers for the Burgher Community. Choice is given between the election of a separate council and the turning over of *Bürger* matters to the council of the Political Community. The latter method is more frequently used, and care is taken that a fair representation of full citizens is elected to the council. Thus one feature of what might seem a complicated matter is put aside by simply giving double functions to one body.

The parish meeting or *Kirchgemeinde*, as stated above, is the assembly of all the members of the same confession living within the boundaries of the community or precinct. In Zürich the presiding officer of this assembly is the village mayor, or, where he does not belong to the same confession, his deputy; but practice differs widely. In some places the manager of church property (*Kirchen-vogt*) is leader of this assembly. Here all matters respecting the church are considered: election of pastors; building and repair of houses of worship; management of funds; just about as would be done in a single church in the United States, except that the state has a certain oversight of things. The rights of voters and methods of procedure are regulated and guaranteed by law and con-

GOVERNMENT IN SWITZERLAND

stitution¹ in both countries, but in Switzerland the parish is regarded as an administrative division, while in the United States the church society is a private corporation.

The School District Assembly may include all the voters of a community, or a village may include a number of such districts. However this may be, the assembly, *Schulgemeinde*, is a meeting of all the voters of the precinct for action upon school matters. Here a Board of Education is elected, taxes voted for school buildings and similar purposes, and a general supervision exercised over all educational matters. Sometimes the teachers are elected by this assembly.

COMMUNITY ADMINISTRATION

The *Gemeindeammann*² is the chief executive officer of the community. He executes the decrees and ordinances of the popular assembly and Council, and maintains a general oversight of the municipal machinery. He is also the agent of the cantonal government for the local execution of state laws. This doubtless accounts for the fact that in Freiburg the Syndic — as the chief executive is there called — is appointed by the Council of State instead of by popular election. He is often a police judge, with varying degrees of competence, and

¹ The relations of church and state are discussed later on, Chapter XI.

² Various known as *Gemeindepräsident*, *Syndic*, *Maire*.

COMMUNITY AND CITIZENSHIP

executes decrees of courts in matters of debt, forced sale, and the like. The term of office is usually several years, but varies widely.

The Communal Council¹ is a board associated with the mayor in the administration of local affairs. Its duties are but in a small degree legislative, since most matters of weight are referred to the town-meeting. Constant supervision is expected of the Council in all matters touching the maintenance of order, sanitation, the management of domains and funds, fire extinction, lights, pavements, as well as general oversight of educational and religious endowments. The Council prepares and presents to the Community Assembly drafts of laws and ordinances which may have originated with the members of the Council themselves, or have been referred to them for opinion. They estimate the revenues and expenses of the community, and propose each year a budget for the consideration of the town-meeting. They provide for the levy and collection of taxes, including state as well as local. In addition to this, the Council is in many places an Orphans Court, and attends to matters of guardianship. As a rule the members are elected for three years or more, subject to the laws of kinship mentioned above in connection with the state executive.² Practice varies in the matter of payment for attendance. Sometimes it is by stated salary,³ sometimes by fees,⁴ and

¹ *Gemeinderath, Conseil Municipal.*

² Page 109.

³ Ticino.

⁴ Zürich.

GOVERNMENT IN SWITZERLAND

again in other cases service is gratuitous and coupled with compulsory acceptance of office.

Space does not permit the writer to go into all the details of city and village government, nor to point out the varieties of officials and names by which they are designated. Enough, perhaps, has been said to show that as much local autonomy prevails as is compatible with inspection by the state. The town can tax itself as much as it pleases for improvements, and its spending powers are limited only by some such general provision as that the existing domains shall not be sold or diminished in amount without the consent of the state government.

Compare this with the arrangement so prevalent in the United States, under which a township must go to the state legislature for permission to tax itself for the smallest kind of a sum¹ beyond a

¹ A case occurred recently in Ohio which illustrates two curious phases of this question: the insignificance of the amount needed, and constitutional trespass upon popular rights.

At one of the county seats a public reading-room was desired, and a few persons interested in the project urged the levy of a tax of one-tenth of one mill on the dollar to raise, in all, the sum of \$600 a year. The local member of the state legislature favoring the plan, a bill was immediately passed, and before the citizens were aware of it they were provided with the means for sustaining a reading-room. Few objected to such an institution, but the matter had been done so quietly and suddenly, that the town's people felt that they had not been consulted, and so great was the outcry that it was deemed best to repeal the law. The act had been passed with the best of intentions, but it shows how undemocratically we may do things.

COMMUNITY AND CITIZENSHIP

fixed constitutional limit. This limit is usually so small as to cover only the bare necessities of government and poor relief, and subjects all effort for public improvement to the sanction of a distant assembly. The consent of this body is usually given through indifference, or hostility is displayed for corrupt purposes. At best it is the perversion of independence.

Connection with the state is maintained in most of the cantons, not by interfering in local matters in which the general public has no interest, but by exercising powers of administrative inspection which bring about uniformity in the execution of the general laws. The local mayor being also for certain purposes a state officer, the community is in constant communication with the central government, and thus becomes a member of the body politic without being held in tutelage.

The practice of certain Romance cantons should be noted here as indicating somewhat the different political instincts of the two sections.¹ In the Germanic community the final source of power and authority is the popular assembly. That body elects the officials, votes the taxes, undertakes new enterprises, and supervises its administrative agents. In Freiburg, Vaud, Neuchâtel, especially in the larger municipalities, and in Geneva City, an intermediate authority is established to which many of these functions are delegated. The *Assemblée Générale* elects a *Conseil Générale* or

¹ See Orelli, p. 134.

GOVERNMENT IN SWITZERLAND

Conseil Communal, varying in number according to the size of the commune,¹ to which are referred many questions which would in the German villages be laid before the whole body. In Vaud the constitution provides that in all the town councils, the general council as well as the smaller executive council, there shall be a majority of full citizens (*bourgeois*).²

The *Conseil Générale* is in reality a legislature which acts for the people, the citizens becoming simply a body of electors. The councils discuss and vote upon the annual budget, supervise the administration of the public domain and funds, the various departments of government, construction of public works, and in general all matters which pertain to the interests of the community.

In Geneva the deliberations of the councils are sent to the Council of State, and ought not to be put into execution without the approval of the latter, particularly when relating to finance, the sale or division of real estate and judicial decisions pertaining thereto, legacies or donations for definite purposes, opening and closing of streets, changes of alignment, or the condemnation of property for public uses.³

Thus a real control is exerted from above, more evident than in the Germanic states, where supervision does not extend to such a degree of detail.

¹ Vaud, 25-100 members (Art. 82), Geneva, 8-18 members.

² Const. Vaud, Art. 84.

³ Droz. Inst. Civique, Appendix by Gavard, p. 38.

COMMUNITY AND CITIZENSHIP

Two advantages are gained by this system. Where councils are established, the life of the community is less liable to be directed by the transient voters, who often form a majority of the residents. Members of the council, elected for three or four years, even if not full citizens, as required by law in some places, would act less heedlessly than a larger assembly of less permanent inhabitants.

The power of state inspection brings about a certain uniformity which may be less conspicuous in German cantons. The actions of all communities being submitted to one central authority, a likeness would necessarily follow from the supervision of such a court.¹

These results, however, are obtained at a certain sacrifice of freedom and originality. The Teutonic communities present a varied picture of social life and organization, all of which is chiefly the result of local initiative. What is done is accomplished by self-government, with the participation of every citizen. The French communes are fully as far advanced in civilization, but their progress is less a product of democracy. They exhibit traits characteristic of their neighbors of France: a liking for order and uniformity, and the logical application of any established regulation.²

¹ Orelli, "Staatsrecht," 137.

² Only the general principles of local government are here presented. Larger municipalities like Basel, Geneva, Zürich, Bern and Luzern show variations due to situation and population.

CHAPTER XI

CHURCH AND STATE

THE general principles which govern the exercise of religious worship and provide that freedom of conscience which by law prevails throughout the whole confederation, are under the guardianship of the federal government and are explained in a later chapter.¹ The practical application of these fundamental rules belongs, however, not to the union, but to the cantons, and just as in respect to political institutions, so in religious matters, there is wide variety in the form of church government and in the actual amount of personal liberty. The relations of church and state bear traces of the historical experiences through which they have passed, and their present condition has been largely determined by natural characteristics of race and locality, moulded into form by events which have occurred chiefly since the beginning of the sixteenth century.

Previously to the great religious revolution which we call the Reformation, the allegiance of both people and government was unhesitatingly given to a single church, the Roman Catholic. Government, as everywhere customary at that period, was

¹ See page 272.

CHURCH AND STATE

the sword-arm of religion in maintaining discipline and in exacting material support. It was regarded as a simple matter of course that the management of religious affairs should be included among the duties of ordinary civil authorities, and taxes were laid upon all for the support of a common worship. Although the Swiss had been somewhat independent in their relations to the Papal See, there was no other religious authority, nor system of belief, which received any recognition, or even toleration, in that country.

The preaching of the reformers, however, soon changed this uniform condition of affairs. Certain parts of the population adhered to the new doctrine, and, wherever the converts were strong enough, they proceeded to make a place for the new form of worship. Owing to the completeness of state-sovereignty in the old confederation, every canton could regulate religious affairs entirely to suit itself, and wherever the Reformation gained a foothold this right was exercised in its behalf. The new worship, in such cases, supplanted the old and became the exclusive religion of state. Toleration of sects was as yet unknown, and animosity went so far that one canton, Appenzell, in 1597 divided itself into two parts, in one of which only Catholics, in the other only Protestants, might dwell. Much unpleasantness, even war, grew out of this condition of things; but the states, finding themselves about equally balanced between the two parties, finally agreed not to combine against

GOVERNMENT IN SWITZERLAND

each other to force the adoption of any belief. This caused more or less cessation of hostilities across state borders, but within each canton exclusiveness reigned, whichever party happened to be at the helm.

There were certain territories, however, which were not independent, but owned and governed in common¹ by partnerships of Catholic and Protestant states. The people of these districts were divided in their religious convictions, and some method of satisfying their demands and some compromise between the ruling cantons had to be found. It was here that the entering wedge of religious liberty for the whole confederation was inserted, for, although individual liberty was long held in abeyance, the states were obliged to recognize community choice in the subject territories. There each parish was allowed to decide for itself whether it would worship under Catholic or Protestant forms, and the minority must conform to the vote. The sects were thus put on an equality, and the principle of "parity" (*Parität*), which still plays something of a rôle in religious matters, took its beginning. Outside of the territories, equality was a question for states, not for communities. In a few cantons some local freedom was allowed, but personal liberty and the quieting of denominational animosity were brought about only by the lapse of long periods of time.

Four interstate treaties, called *Landfrieden*, dat-

¹ *Gemeine Vogteien*. See page 22.

CHURCH AND STATE

ing from 1529, 1531, 1656, and 1712, mark the slow steps of religious liberty through all those centuries. None of these acts established more than territorial freedom of worship. The Helvetic Republic afforded a short breathing-space for unobstructed liberty of conscience, but gave way, under the Act of Mediation, to simple liberty of worship for Catholics and Protestants. The Pact of 1815 failed to determine the status of religion, except to sustain existing institutions by guaranteeing the inviolability of monasteries and their property, thereby leaving an opening for misunderstandings which culminated in the civil war of 1847. Even the constitution of 1848 recognized only the "Christian confessions," and guaranteed the right of domicile and of worship only to adherents of these. It is to the revision of 1874 that we must look for the religious rights now enjoyed by the Swiss citizen.

As of old, the regulation of worship lies within the province of the canton, but not as formally under the eye of a nerveless confederation, but according to the directions of a central government whose rules are few but firmly administered. These rules affect the individual and society in general, rather than the constitution of religious bodies. The freedom of belief and of conscience is inviolable, choice of worship shall not be constrained, religion shall not interfere with marriage nor the legitimacy of children; religious doctrine shall not be forced upon the young in educational

GOVERNMENT IN SWITZERLAND

systems, and, finally, religious contention shall at least stop at the grave, and every man be decently buried, whatever his belief may have been. All these are uniform laws for the confederation, but for each state there is a different system for giving expression to the more particular religious needs of communities and individuals. In some parts, government does all things, in others, more is left to private initiative; hence it is difficult to present an exact picture of the state of religious institutions for the whole country. Federal and state constitutions must be studied side by side.

The two grand divisions of religious belief are the Protestant and Roman Catholic Churches, the former being somewhat more numerous than the latter. In nine cantons Catholics preponderate to such a degree that the Roman Church is the only established religion; in six, both the Catholic and the Evangelical Churches are supported by the state; in five others there are three state churches, the Old Catholic being added to the former two. In Bern, Geneva, and Basel-City, Evangelical and Old Catholic are established; in Outer Appenzell the Protestant Church is the sole *Landeskirche*; while Neuchâtel supports an Israelitish society in addition to the three Christian sects.¹ Thus in all of the states, one or more denominations are supported by the public treasury, but there are also numerous independent churches supported by the voluntary contributions

¹ Orelli, "Staatsrecht," 156.

CHURCH AND STATE

of their members. In addition to congregations of Methodists, Baptists, Irvingites, Darbyites, and Swedenborgians, there is, especially in Vaud, Neuchâtel, and Geneva, a considerable religious body known as the Free Church. This latter denomination sprang from an endeavor to gain freedom from state interference, and at the same time maintain a stricter confession of faith. It was, in reality, a protest within the Protestant Church, and in Geneva and Vaud dates from 1835, but began in the early part of the century. In Neuchâtel it was a result of the ecclesiastical law of 1873 which made every citizen, *ipso facto*, a member of the church and abolished all theological tests for ministers.

The Roman Catholic Church of Switzerland is governed by the same forms and authorities that are usually found in other countries. In most cantons the government retains the right to confirm appointments to ecclesiastical office, and exercises a general supervision over the management of church affairs. The confederation is divided into five bishoprics, Chur, St. Gallen, Basel, Lausanne, and Sitten. At present the canton of Ticino is outside of any recognized episcopal jurisdiction, as the federal government refuses to have it made a part of adjoining Italian bishoprics. This is one of those cases mentioned before,¹ where the state endeavors to prevent divided allegiance in case difficulty should arise with foreign

¹ See page 48. Also page 232.

GOVERNMENT IN SWITZERLAND

countries. The bishopric Sitten (*Sion*) is governed in ecclesiastical matters entirely by canon law, as no state laws have as yet attempted to change the ancient order of things.

The Old Catholics (*die christkatholische Kirche der Schweiz*) are a body of seceders from the Roman Church who separated during the agitation caused by the proclamation of the doctrine of Papal infallibility. They were sufficiently numerous in 1873 to organize into separate churches, and soon commanded recognition on the part of the state. In Bern, Geneva and Basel-City, the support formerly given to Roman Catholics is now turned over to the Old Catholic denomination. One bishop stands at the head of all Old Catholics in Switzerland, and the general interests of this religious body are governed by a synod of all priests in active service, assisted by lay delegates from the churches. A Synodal Council, consisting of five laymen and four ecclesiastics, acts as chief executive committee.

The Evangelical Church, as the established reformed body is usually called, being independent of any foreign hierarchy, displays the most complete forms of local and state self-government. There is no chief person, or persons, whose jurisdiction in religious matters extends over the whole confederation, or even passes over the borders of states. General conventions upon church affairs may be called, but they are without final authority, the ecclesiastical government of each canton being

CHURCH AND STATE

the highest power within its own territory. Hence it is in this branch that we shall find the relations of the church to the civil state most fully exemplified. The general principles upon which this relationship is based are, first, that in purely ecclesiastical matters, such as the regulation of church service, choice of hymnals, forms of liturgy, or the instruction of candidates for confirmation, the church authorities shall decide, sometimes with, sometimes without, the assent of the state. On the other hand, affairs of a mixed nature, such as the management of church property, payment of salaries, regulation of parish boundaries, and the like, are ordered by the state, on the recommendation of the ecclesiastical authorities. But no exact statement of these relations can well be made, for in some cantons the church, in others the civil authority, preponderates.¹

The central church authority in each canton is the Synod.² This consists, in some cases, of all of the evangelical clergy, with deputies of the civil government; in other states it is a variable number of clergy and laity together. As a rule the Synod meets annually to consider the prosperity and discipline of the church. A central executive committee, known by various names (*Synodalkommission*, *Kirchenrath*, etc.), prepares the business and executes the orders of the Synod. Sometimes this council is elected by the Synod,

¹ Orelli, "Staatsrecht," 148.

² In Geneva, the Consistory.

GOVERNMENT IN SWITZERLAND

sometimes only in part ; and practice varies as to giving the state authorities a place in it. Its duties include the regulation of admission of candidates for the ministry, oversight of pastoral work, decision of cases of discipline which have been sent up on appeal, and, in some states, general supervision of church property. Representing the general assembly of the church, the Synodal Commission is the chief organ of Protestant religious life in the states where it exists. In a few states an intermediate church authority is established in the district. Only in Zürich and Vaud is this a standing committee ; more frequently the pastors of the district act as a minor assembly for the regulation of affairs within their territory, and suggest improvements to the state Synod.

Local religious life finds expression in the parish (*Kirchgemeinde*), which, as we have seen in the study of the community, covers a variable amount of territory according to the number of communicants, and includes all voters within its precincts who belong to the same denomination. The government of the parish is eminently democratic. As a rule the societies choose their own pastors, though practice varies as to the process of nomination and as to the consent of the civil authorities. The members also elect the church officers, and control expenditures and administration by periodical votes and approval of accounts. These local officials, known by different names (*Kirchenrath*, *Stillstand*, *Ehegaumer*, etc.), administer the

CHURCH AND STATE

affairs of the society, supervise the work of the pastor, the instruction of the young, and in general keep an oversight of the moral condition of the parish. In some cantons the church committee is also the regular local board of overseers of the poor, and the channel of pauper and orphan relief. In some cases, also, entire independence is granted to each congregation in more spiritual matters, as in the choice of an order of worship, hymnal, or liturgy ; in others the people may choose between the forms sanctioned by the Synod.

Under these conditions, the pastor becomes in reality an officer of state, drawing his salary, usually, from the cantonal treasury, though sometimes from the parish. The support is very modest, the stated salaries ranging upward from one thousand to five thousand francs a year, but these amounts are sometimes supplemented by the congregation. The term of service in five states is for life, in others it varies from three to eight years, yet there are means by which unpleasant pastoral relations can be changed at any time for cause. Under all circumstances, however, long periods of continuous service are usual, the power of election being a safeguard held more in reserve than in use. The suspension and dismissal of delinquent clergy is accomplished by church boards and synods, under conditions which vary according to the relations of civil and ecclesiastical authorities in the different cantons. In Bern, dismissal can take place only through judgment of court.

GOVERNMENT IN SWITZERLAND

Once elected, the pastor is comparatively free to teach and preach as he thinks best. As it is in civil institutions, so also in Protestant religious life there will be found a large measure of local independence in spiritual matters. The clergy are in every state expected to have had a university training and be able to show a diploma from a theological faculty, but the test of theological belief is limited to some form of oath, of which the import is that the subscriber will observe the Bible as the highest rule of faith and practice. In none of the established churches is the minister bound by articles, nor by an official confession of faith, other than the oath of allegiance. In Neuchâtel and Geneva the responsibility for doctrine rests entirely upon the conscience of the minister. "The liberty of the conscience of the ecclesiastic is inviolable; it shall be restrained neither by regulations, nor by oaths, nor by engagements, nor by disciplinary punishments, nor by the articles of a creed, nor by any other measure whatever."¹ "Every pastor teaches and preaches freely upon his own responsibility; this liberty shall be restrained neither by confessions of faith nor by forms of liturgy."² In the free churches and self-supporting congregations of all denominations restrictions may be imposed upon the minister, or not, as may suit the convictions of the sect, but these do not come into a consideration of the constitutional aspect of church and state.

¹ Neuchâtel. ² Geneva, Constitution, Art. 123, as amended 1874.

CHURCH AND STATE

It would be impertinent to attempt to sum up in a few sentences the religious life of a numerous people of diversified nationalities, and living under different forms of government. It must suffice to recall to mind that in the religious history of Switzerland we have to do with a country which on account of its moral earnestness has always been peculiarly favored by the Roman Papacy, and at the same time has given birth to two of the greatest movements of the Protestant Reformation. Among its citizens were enrolled two of the most prominent figures in the history of the church—Zwingli and Calvin.

Life does not now present the sombre aspect of the period of the Reformation. Good citizens no longer cherish animosity against pictures, statuary, and the comforts of household life. Since the fifteenth century the population has multiplied itself by twenty, and material wealth and complexities of existence have more than kept pace with this growth. Many of the churches of to-day stand just as they were three hundred years ago, and worship still goes on, but the religious life of the people cannot be measured altogether like Xerxes' army, by the churchful. New activities, new charities, and in general the social well-being of the communities, must be weighed with the devotion and the preaching.

If improvements may be here suggested, they would begin with an increase of salaries for the clergy. Under the best of circumstances the pastor

GOVERNMENT IN SWITZERLAND

is obliged to be imbued with the spirit of self-sacrifice, but if he is of any value he is worth more than the meagre salaries now paid. The number of theological students has fallen to a very low point. It would not be necessary to compete with the inducements of more worldly careers, but enough should be offered to bring the standard of pastoral existence up to a modern basis.

People who are accustomed to complete separation of church and state might insist that disestablishment would be the best means of infusing new life into the church. This may be true, but the Swiss have grown up so long in the old way that it would be a great while before they understood a church supported by voluntary contributions. It will be for some time yet a question of making the old system work better.

In 1897 a bill was proposed in Geneva which would have abolished the ecclesiastical budget, or, in other words, would have accomplished the separation of church and state. When submitted to popular vote the project was rejected by a majority of two to one.¹

¹ Hilty, "Jahrbuch," 1898.

CHAPTER XII

EDUCATION

THE fundamental principles upon which the school systems of Switzerland are built are, that the rudiments of knowledge shall be freely given to every child, and that every child shall be compelled to receive them. "Primary education is compulsory, and in the public schools free," says the federal constitution,¹ and the laws and constitutions of the cantons are framed in the same spirit. Beyond this point there is no general law to which the states feel obliged to render obedience, hence secondary and higher education is carried on according to the various ideas and desires of the several states, and a wide divergence is exhibited. Primary education is also interpreted differently in different states, the amount of training due to a child being considered in some cantons far greater than in others. Yet everywhere it is the law, that for a certain portion of the year the child must go to school; consequently schoolhouses and teachers must be provided, and the machinery of instruction kept in motion by the same power that made the law. It is this connection between government and education, rather than the pedagogical or moral

¹ Art. 27. See also page 269.

GOVERNMENT IN SWITZERLAND

result, that is intended to be brought out in this brief summary.

The local authorities for the management of schools were mentioned in connection with community government.¹ In every township are to be found one or more school districts in which the highest power is the *Schulgemeinde* or assembly of voters belonging thereto. This assembly decides the larger questions of local school economy, and usually elects, for nearer management and oversight, a *Schulrath* or school-board, which varies in size in different states. This body is, almost without exception, independent of the political government of the community, for, even where originating as a committee of the regular town council, it manages separately the details of school business. The school council occupies a position very similar to the Boards of Education in the United States.

Except in two states² of small area, there stands above the local board an intermediate school authority for the district. In Zürich this consists of a body of representatives chosen from the town school committees and from the teaching force of the district. St. Gallen has a similar district board appointed by the state educational commission, but usually the district authority is an inspector, like the American county superintendent, or may consist of several coördinated supervisors whose collective duty is to see that instruction is given according to law and on a uniform plan.

¹ See page 146.

² Outer Appenzell and Zug.

EDUCATION

Cantonal supervision of schools prevails throughout the confederation, but in widely different forms. In all of the cantons there are state boards chosen for fixed terms of office and given various names, but in some of the small democracies this body is elected by the people and is independent of any other executive authority, except, perhaps, so far as to render to the cabinet an annual report. In other states there is more or less organic connection; the cabinet will have a representative in the state board of education, or the executive authority will either have the final decision upon school matters, or be called upon to approve the action of the school council. In any event there is complete connection between the lowest units and the highest powers of state in educational affairs, and in a few cantons the state associations of teachers and inspectors are assured a legal influence upon the management of the school system.

The burden of primary education is divided between the state and the community, but in different degrees. In about half of the cantons, most of which are predominantly agricultural states, the duty falls chiefly upon the community, but with assurance of state assistance. On the other hand, in Basel-City the state government is almost wholly responsible for the maintenance of schools, while in other places the canton may bear one-half or one-fourth of the expense. The average for the whole confederation is estimated at two-sevenths for the canton, against five-sevenths

GOVERNMENT IN SWITZERLAND

for the community. In most of the states, communities are obliged to maintain permanent funds, from the increase of which the schools are to be, so far as possible, supported. We may see here a reason for the cantonal inspection of local government mentioned before,¹ since the state is, above all things, interested in the education of its youth, and could not suffer the possible greed or short-sightedness of a town to deprive the children of proper school privileges, or throw more of the burden upon the general public. Several states also possess cantonal educational funds distinct from those of the communities. The total amount of school property maintained in the cantons is large, and the annual expenditures for education, though not large in comparison with foreign budgets, are greater than many in proportion to population.²

The period of obligatory attendance covers from six to nine years of the child's life, beginning at the age of six or seven,³ the gradations of instruc-

¹ See page 99.

² In 1896 the amount expended by cantonal governments for all forms of education amounted to 18,925,875 francs. In addition to this, communities expended 21,665,224 francs. To this should be added the subsidies of the confederation and the expense of the national polytechnic school, 1,939,927 francs. These outlays amount in all to 42,531,026 francs in a population little over 3,000,000. The total expenditure throughout the confederation for primary education alone in 1896 was over 23,555,290 francs, or a little over 50 francs for each primary scholar. See "Jahrbuch des Unterrichtswesens in der Schweiz," 1895-96.

³ The school year begins in nearly all states in the spring, not in the autumn as in the United States.

EDUCATION

tion varying greatly according to the advancement of the educational system in the canton in question. Frequently the school programme for all grades is the subject of elaborate cantonal laws, and at least the minimum amount of instruction in the elements of knowledge is made uniform for the whole canton. The federal factory law regulates the employment of child-labor in establishments of a certain class, hence the cantons are still further assisted in getting all children into the schools, up to the age of fifteen.

The primary school leads up to higher grades which are supported by the state, but these may be classed as optional, so far as attendance is concerned. The first step is the *Fortbildungsschule*, *École complémentaire*, in which youth who have completed their obligatory schooling may continue studies for general culture, for special instruction needed in their future vocation, or to bring themselves up to the legal educational qualification for citizenship demanded by the annual examination of recruits. These schools are usually arranged to meet evenings or Sundays, so that persons in active business may get the benefit; the support coming in the first place from associations, unions, or societies, with assistance from the canton. In the case of technical *Fortbildungsschulen* assistance is given by the confederation, provided the state and community give at least twice as much. In some cantons attendance at such a school is made obligatory for certain classes of scholars who have

GOVERNMENT IN SWITZERLAND

not properly obtained their primary education, or who need to review for military examination.

More strictly in line with a progressive scheme of education are the secondary and so-called "middle schools," which receive the pupil at the completion of the primary period¹ and carry him forward three to seven years longer. Like the high schools in the United States their object is twofold: to prepare the youth for practical life, and, for such as desire it, for advancement to the universities and professional schools. In this class of institutions the state calls upon the parent to bear part of the burden of support. In two cantons² even these schools are free, but in all other states an annual tuition fee, ranging from twenty to fifty francs, must be paid. Private schools of all these grades also exist, but they are always subject to state inspection.

The test of educational advancement, however, and perhaps of social condition in general, in a given country, is the state of higher education and the amount of support given to universities and scientific research. In this respect Switzerland does not lag behind, for beside several advanced colleges and professional schools there are six fully equipped universities, situated at Basel, Zürich, Bern, Geneva, Lausanne and Freiburg. To these add the Federal Polytechnicum at Zürich, which has a greater attendance than any one of

¹ Usually about the age of twelve.

² Basel and Zürich.

EDUCATION

the universities. It is not necessary to call attention to the reputation of the universities of Switzerland, for in most cases that is international. The point of interest in this connection is the fact that they are supported by the treasury of the states in which they are located, and are the products of democratic government. They do not, it is true, rival the great institutions of Berlin and Vienna, but the scientific schools of Zürich taken together offer advantages inferior to few German universities. In the case of Zürich the central government does the larger part, but Geneva, with a population of about 118,000, maintains out of its own resources a university with a faculty of a hundred professors.

It has been alleged that only monarchical governments and princes are favorable to the highest development of education, science, and the arts. It is true that in European history, monarchs and even despots have been largely responsible for the great institutions of learning which have depended upon foundations for their support, but it will also be remembered that in the beginning universities were themselves democracies,¹ in which the students were everything and the lecturers nothing, on the side of government and discipline. In the days when professors as well as students were nomadic, there was no such thing as a closed "aristocracy of letters." One can hardly allege

¹ The title by which Uri was known in the charter of the original confederation was "Universitas vallis Uraniae."

GOVERNMENT IN SWITZERLAND

that popular government has been detrimental to education in the Swiss republic.

Of the democracies of Switzerland, which have thus set for themselves a high standard of primary and secondary instruction, Zürich is doubtless the best example, though the cities of Bern and Basel might not be willing to admit as much, for the quality is good in all of the large towns. In the rural cantons, such as Uri, Schwyz, Unterwalden, and others, the sums expended are comparatively small, but, as a whole, Switzerland is said to have, relatively to the population, more public schools than any other European nation. Adding together what the cantons and the confederation do for culture, art, and science, the showing made by this one small country is noteworthy.¹

¹ According to Hickmans' "Geog. Statis. Univ. Taschen-Atlas" (1897), Switzerland has one primary school to every 315 inhabitants, and 167 pupils to every 1000 souls. The percentage of illiterates is greater than in Sweden and Germany, as shown by the examination of recruits. This is probably due to the difficulties of life in the remote mountain regions of Switzerland.

In 1896, Switzerland had 1032 journals and magazines, or 1 to every 3000 inhabitants. In the United States at about the same time the ratio was 1 to 3100; in Germany (1894), 1 to 4727; in France (1896), 1 to 6333; in England (1896), 1 to 7800.

PART II

FEDERAL GOVERNMENT

CHAPTER XIII

FEDERAL LEGISLATION

THE Swiss Confederation is provided with the usual instruments of government. A national legislature enacts laws, a federal cabinet administers these ordinances, and a supreme court adjudicates questions arising under them. Assuming that the Swiss people have adopted a constitution, we may consider next the methods of statute legislation.

THE NATIONAL COUNCIL (*Nationalrath*)

The law-making powers of the general government are intrusted to a Federal Assembly, composed of two chambers which are distinguished as the National Council and the Council of States. The National Council is the more numerous body and occupies a position similar to that of the American House of Representatives. Each member represents ordinarily a district containing 20,000 inhabitants, apportioned according to a decennial census. These districts cannot overlap the borders of two cantons, consequently it may happen that the division will leave here and there a district with less than 20,000. If the inhabitants number more than 10,000, they also may have one representative,

GOVERNMENT IN SWITZERLAND

and thus the rights of all sections are duly regarded in the law. Yet election jugglery is not unknown, even in Switzerland. The cutting of districts to suit party purposes is called there "Election-district Geometry" (*Wahlkreisgeometrie*), but this procedure has been tried only to a limited extent in national affairs. In cantonal politics a remedy has been found in proportional representation.¹

Since 1850 the number of delegates has increased from 120 to 150, yet, as might be expected, there is the widest difference between the states with regard to representation. Bern sends twenty-seven deputies, while Uri, Zug, the half-cantons Obwalden and Nidwalden and Appenzell Interior have but one each.²

The election is direct and by secret ballot, and any Swiss citizen who is twenty years of age and otherwise in possession of his civil rights, according to the laws of the canton of his residence, can take part. To be a candidate requires no further qualifications than to be able to vote, except that clergymen are debarred. Any Swiss citizen, not of the clerical profession, may sit in the National Council. This exceptional provision remained over from the constitution of 1848, and was originally aimed at the Jesuit order, whose activity in Swiss politics and in the war of the *Sonderbund* had rendered them, for a time, obnoxious.

¹ Dubs, "Öffentliches Recht," II., 48.

² Next to Bern in representation follow Zürich, Vaud, St. Gallen, and Aargau. The census of 1900 will cause some readjustments.

FEDERAL LEGISLATION

The term of office is three years, and the whole body is subject to reelection at the end of that time. Elections for the National Council must take place in all districts at once, on the last Sunday in October. The members receive payment for their services out of federal funds according to the amount of attendance, the rate at present being twenty francs per diem with mileage.¹ The compactness of the country and the facility with which the legislature may be assembled is seen when we observe that the most distant community is only 221 miles from the capital.

A president and vice-president of the National Council are chosen at every session, but neither of these offices can be filled by the same person during two consecutive sessions. The president votes on a measure of legislation only when the house is equally divided, but in the election of officers he may vote regularly like any other member.

The house also elects from its own number four tellers, who with the president and vice-president form what is called the Bureau. To this Bureau is intrusted the nomination of most of the committees, the business of looking after the absentees

¹Mileages are fixed by an official "Distance Gazette," which includes almost every hamlet in Switzerland. The rate is 20 centimes per kilometer each way, with 10 centimes per kilometer additional for mountain passes. Judges of the Supreme Court, members of the Federal School Commission, and certain other classes of national officials are entitled to mileage at the same rates.

GOVERNMENT IN SWITZERLAND

and their excuses, beside the counting of votes and certain other matters.

Two ordinary sessions are held every year, beginning on the first Monday of June and the first Monday of December, the summons proceeding from the Federal Council (cabinet), or, if this should fail, from a demand of one-fourth of the members of the house itself, or that of five cantons.

THE COUNCIL OF STATES (*Ständerath, Conseil des États*)

When the evils of the old system of government by a diet of special delegates finally became unendurable, it was resolved to adopt the bi-cameral system which had been so long in operation in England and America, and for longer or shorter periods in other countries of Europe. The basis for such a division could not be the same as that in England, because the constitution at the same time declared that there should be no distinction of classes in the confederation by reason of birth, title, or privilege. Hence the American plan of representing the states in an independent house conformed more nearly to historic conditions in Switzerland.

The cantons are represented by two delegates each, making forty-four in all; the manner of election, the term of office, and the amount of compensation being determined entirely by the states themselves. Thus a great diversity of methods obtains in these particulars. In some cantons the

FEDERAL LEGISLATION

delegates are elected by general popular vote, in others by the legislature. The term of office varies in length, from one to three years, and as the cantons differ in regard to reelecting the same men, there is liability of continual change in the personal make-up of the upper house.

Thus, an assembly which fully represents the state-rights idea has been established, but without the regularity of construction, the facility in conduct of business, and the dignity with which long tenure and experience in legislation naturally clothe a senate. Owing to this fact, the best talent in political life prefers to sit in the National Council, and, consequently, the centre of gravity in federal affairs is to be found in the lower house. The organization of the Council of States is similar to that of the National Council, having a president and vice-president chosen at every session.

FUNCTIONS OF THE FEDERAL ASSEMBLY

In general terms, the Federal Assembly takes into consideration all matters which lie within the province of federal government. When the particulars are inquired into, it will be seen that in addition to legislative duties it has also certain administrative and judicial functions. The Assembly not only maintains an oversight of these other branches of government, but elects the officials who carry on the work. The federal cabinet, the

GOVERNMENT IN SWITZERLAND

judges of the Supreme Court, the Chancellor or Secretary of State, and the General-in-chief of the army, all owe their positions to the vote of the legislature.

It acts as a judicial body as a last resort in deciding on complaints against the federal executive, and on questions of competence between different departments of the government. Its properly legislative functions include laws upon the organization and election of federal officials, their emoluments, treaties with foreign powers and ratifications of agreements among cantons, the annual financial appropriations, and, more fundamental than all, the power to act as a constitutional convention when it so desires, or when a popular vote demands it. When acting in a legislative capacity, the houses deliberate apart, and measures must obtain a majority of votes in each to become laws; but when electing federal officials, or sitting as a court of justice, the chambers meet together and matters are decided by a majority of all the members combined.

Freedom of speech and liberty of action in voting are guaranteed. No positive instructions can be forced upon a representative in either house by his constituents.¹ Inviolability of person and freedom

¹ Yet a certain kind of responsibility is said to be placed upon members of the Council of States in some cases where they are elected by cantonal legislatures. This latter body sometimes requires the delegates to give an account of themselves, thus exercising an *ex post facto* control. Law on the subject, "Amt. Smlg." 2, 149, Wolf's Collection, I., p. 29.

FEDERAL LEGISLATION

from arrest, except for crime, during his term of office, are further safeguards placed about the legislator.

THE CONDUCT OF BUSINESS

At the beginning of each session, the Federal Council sends to the presidents of each house a list of the matters which have been placed in its hands to bring before them, with comments, showing the stage at which each measure has arrived. These may be subjects which have been previously referred to the Council for opinion, or new matters brought to the attention of the Assembly by state governments or by private individuals. The presidents then consult together as to which house shall first deliberate upon each measure, and having come to an understanding, each lays before his own house, at its first or second sitting, the result of this division. It is also the duty of the president of the lower house to call together one or more committees previously to the beginning of each session, so that their reports may be ready for discussion as soon as the legislature has assembled.¹

When bills are under discussion, the presence of a majority of members is necessary to form a quorum, and a majority of all votes cast is necessary to enactment. When passed by one house, they are signed by the president and secretary and

¹ Reglement, Zusatz, Wolf, I., 62.

GOVERNMENT IN SWITZERLAND

sent to the other chamber. If passed by that body also, the bill is returned to the first chamber which enacted it, and by that given to the Federal Council for promulgation. If amendments occur, the measure is referred back and forth between the houses until agreement is reached or the matter dropped. When an amended bill is brought up for discussion, the points upon which an agreement has been reached fall out of consideration and further debate is confined to matters still in dispute.

Members of the Federal Council have a right to speak in either branch of the Assembly, and to make motions upon any subject at the time under consideration. They are also subject to interpellation as to the conduct of affairs, and must answer at the same or at the following sitting.

The daily sessions begin in summer at eight o'clock in the morning, and in winter at nine, and continue as a rule five hours. Members are required to appear in black clothing,¹ and to answer to their names at roll-call or furnish an excuse to the president. The absentees are noted in the minutes, and if they do not appear within an hour, or are absent without excuse, they lose their pay for the day.

Business can come before the houses either in form of (1) motion, bill, or report from the Federal Council; (2) a communication from the other

¹ A reaction against the airs assumed by senators and representatives of the Helvetian Republic, who distinguished their rank by conspicuous garments, hats, or sashes.

FEDERAL LEGISLATION

house; (3) report of a committee; (4) motion of a member; or (5) a petition. The president having fixed the order of the day beforehand, precedence takes place according to the calendar. The motion or report is then read in two official languages, German and French. Members of the committee have at this time a right to add explanations or note their dissent from the report, and thereupon the debate opens.

Members address the house from their places, and may speak to the question not more than three times.¹ Those who desire to take part give their names to the president after the debate has opened, and he is required to keep a list of these in the order in which enrolled, and to grant the floor accordingly. Members may use either the French, German, or Italian language, as educated Swiss are apt to know at least two of these; but if any one so requests, the translator, a functionary who assists the secretary, must give the substance of addresses made.

When a bill is brought up for discussion, the ordinary procedure is first to decide whether the subject ought to be entertained, then, if decided affirmatively, whether to discuss it at once, either as a whole, or article by article.² Having entered into a subject, and then after discussion having voted to take certain measures, the resolutions are

¹ It is forbidden to read speeches from manuscript.

² For measures relating to federal law of personal status (*Civilrechtsgesetze*), a special order of procedure is used.

GOVERNMENT IN SWITZERLAND

referred to the Federal Council, who must present a final bill adapted to the condition of existing statutes. Thus the confusion in which a measure often finds itself after a long debate, and the conflicts which may in haste be overlooked, can be corrected by a body of men who are engaged in the administration of all classes of law, and can place the demands of the assembly in logical relations.

Committees are appointed to consider business of all kinds, but bills are referred to them, not of necessity, but by vote of the house in each case. These committees may be chosen by the chamber by open or secret vote, or the appointment may be left to the Bureau, mentioned above, which consists of the president and the four tellers. According to a rule of the Council of States, all committees in that house on certain groups of business, as railways, military, etc., must be newly appointed every year; a practice which, one would think, would add to the weakness of that body.

The sessions of the legislature are so brief that the time must be put to the best possible use. The presidents of the two houses are required to call meetings of certain committees before each session, in order to have business ripe for immediate discussion.

The rules of the Council of States do not differ essentially from those of the lower house. Both are characterized by a desire to have matters carefully examined and to give full opportunity for

FEDERAL LEGISLATION

discussion. The chambers are not so large as to demand a rigorous clôtüre for the expedition of business, and obstruction does not seem to be much in vogue. The rules allow debate to be brought to a close by a vote of two-thirds of the members present, but this cannot take place so long as any member who has not yet spoken desires to offer an amendment and to explain it.¹ The sessions are as a rule open to the public, but visitors must refrain from any expression of approval or dissent. Secret sessions may be ordered if the motion is seconded by ten members, or on request of the Federal Council.

The record of legislative proceedings is kept by an officer known as the Federal Chancellor. He is elected by the Federal Assembly at the same time that the Federal Council is chosen, and serves also for three years, but is not a cabinet officer. A deputy, called Vice-chancellor, is appointed by the Federal Council. His special duty is to keep the minutes of the Council of States, while the Chancellor attends to the records of the more numerous house, but with responsibility for both. Clerical assistance will, of course, be understood as necessary.

Formerly these records were kept only in condensed form; the practice in both houses being substantially identical in requiring simply a statement of the business brought forward, and when divisions were taken, the names of voters for and

¹ Geschäftsreglement, Art. 49, Wolf, I., p. 59.

GOVERNMENT IN SWITZERLAND

against. But in recent years, stenographic reports have been introduced in the lower house.

The record of each day's proceedings is signed by the respective presidents and secretaries of the houses. Laws and resolutions also receive the same attestations.¹ But the Chancellor is not solely an officer of the legislature. He is a general master of records, having duties similar to those of the Secretary of State in American commonwealths, with supervision of the publication and distribution of laws. When the legislature is not in session he is secretary to the federal cabinet, attends its meetings, and prepares its communications and orders. Hence we find the promulgation of a federal law bears the signature of the Chancellor ("*Protokollführer*") in this capacity.²

The signatures of both the President and of the Chancellor of the confederation are merely attestations of genuineness. The President has no right

¹ Form of attestation: —

Also beschlossen vom Ständerathe.

Bern, den 20. April, 1883.

Der Präsident: *Wilh. Vigier*.

Der Protokollführer: *Schatzmann*.

Also beschlossen vom Nationalrathe.

Bern, den 23. April, 1883.

Der Präsident: *A. Deucher*.

Der Protokollführer: *Ringier*.

² Bern, den 16. Oktober, 1883.

Im Namen des schweiz. Bundesrathes,

Der Bundespräsident: *L. Ruchonnet*.

Der Kanzler der Eidgenossenschaft: *Ringier*.

FEDERAL LEGISLATION

to withhold his assent to any document legally enacted, nor has he any veto power like that of the President of the United States. This belongs to another element in the state, which we must next consider.

CHAPTER XIV

THE LAW AND THE PEOPLE

THE REFERENDUM

BILLS which have been passed by both houses are promulgated by the Federal Council. In most other countries such acts become laws at once on the date appointed in the publication, but in Switzerland there is another power to be heard from before a measure can be considered to have been enacted. For ninety days the law may be said to be on probation, for if within that time a sufficiently numerous body of citizens so demand, a popular vote must be ordered, and acceptance or rejection decided by that.

This procedure, known as the Referendum, was for a long time peculiar to Switzerland. The history of its origin and growth has been more fully treated under the head of cantonal government, because the institution has had larger development there than in the confederation. The methods of taking the federal plebiscite only will here be noted.

All laws subject to the Referendum are published immediately after passage, a sufficient number of copies sent to the government of each

THE LAW AND THE PEOPLE

canton, and for ninety days submitted to inspection. Exceptions to this rule are acts which are of an "urgent nature" and resolutions which are not of general application. The question as to whether a bill is urgent or not is decided by the federal legislature itself, and if so declared, the Federal Council is ordered to put the same in force at once. Urgency has been variously interpreted and practice has not always been consistent in defining laws of general application. For evident reasons of public policy the federal budget and international treaties are not submitted to vote of the people, but definitions have at times been strained in withholding bills for the subvention of railways, on the ground that they were of private and not of a general nature. If the law comes under the rule and during the period of probation thirty thousand citizens petition for a popular vote, the bill must be submitted to that ordeal. If the request comes from the governments of eight cantons the effect is the same. Here again both the democratic and the federal idea may be represented in an expression of opinion. The thirty thousand citizens, being about one-hundredth part of the whole population, or about one-twentieth of the voters, stand for the democratic principle, while the states may speak as sovereign bodies. No canton, however, has as yet used this privilege, the demand always arising from popular agitation.

The request for Referendum takes the form of a written petition addressed to the Federal Council.

GOVERNMENT IN SWITZERLAND

The petitioners must sign the paper with their own hands, and the signing of any name but his own subjects the voter to the penalties of the criminal law. It is not necessary that the document should be signed in the presence of an official, but the voting qualification of all names on the petition must be attested by the signature of the chief officer of the commune.¹ To make an expression of opinion as free as possible, the authorities are forbidden to take any fees for the witnessing of signatures.

If, after careful examination of the returns, the Federal Council finds that the request is supported by the required number of citizens or cantons, it orders a general vote, notifies the various state governments, and provides for a generous publication of the bill or resolution. The date of the vote cannot be less than four weeks after the announcement, and must be the same day for the whole confederation. The voting takes place under the charge of the cantonal and communal authorities according to these general regulations; every Swiss citizen who is in full possession of his civil rights having the privilege of participation.

If a majority of all votes cast in the required number of states is in favor of the project, it is accepted, and the Federal Council orders it to be placed in the statute book. A contrary vote puts a stop to its execution, but in case no petition is submitted, the Federal Council announces this fact

¹ Salis, "Bundesrecht," I., 426.

THE LAW AND THE PEOPLE

at the expiration of the ninety days, and the bill becomes a law.

It will be seen that this petition is no ordinary expression of sentiment gathered at haphazard from all sorts of people. It is a serious act of sovereignty in which only voters participate, and is guarded by many of the precautions of an election.¹ When signed the petition cannot be laid aside, or deferred, at the pleasure of the administration, but is a command on the part of citizens to submit a law to vote. The legislature cannot consider its work done until the constituents have been heard from either by an actual vote or by tacit acceptance of the new statute. The people are not obliged to suffer unpalatable legislation until a new set of law-makers is elected.

This institution has been the cause of a great amount of discussion both in and out of Switzerland. It was not adopted as a new creation in 1874, since it had been gradually coming into the cantons since 1831, yet the principle has not been accepted without question. It is a realization of democracy which surpasses the fondest hopes of the revolutionary theorists, yet there is a conservative element about it which surprised its early sponsors. Introduced as a democratic and progressist weapon, the Liberals found after a time that the people would not move so fast as they wished, and could use the Referendum to cut both

¹ "Amt. Smlg.," N. F., IV., 81, Wolf, I., 76.

GOVERNMENT IN SWITZERLAND

ways. The Swiss have at times rejected laws which, in all reasonableness, would seem to have been for their own good ; yet, on the other hand, they have not made an excessive use of the veto power, and have corrected, at later elections, mistakes of other days. About ten per cent of the laws coming under the rule have been subjected to popular vote. It would seem as if most of these were called out only to be rejected. Yet it would not be just to draw inferences from the percentage of accepted and rejected laws simply out of the number put to vote, but the whole body of legislation, those referred and those allowed to pass in silence, must be taken into consideration before any certain veto tendency can be assumed. Between 1874 and 1893 the Federal Assembly passed 164 laws and decrees which were subject to the Referendum. A vote was demanded on eighteen of these, and twelve were rejected. Of these twelve, four were afterward slightly revised, and accepted without a call for ratification.¹

It must be conceded that legislation has been advancing slowly but steadily upward since the formation of the present confederation. The tendency toward centralization has not gone on as fast as the law-makers would have liked, and the common voters have made themselves felt in curious ways. The old instinct of sectionalism has been hard to lay aside, but, notwithstanding fretful political breezes, this same people has continued

¹ Droz, "*Études*," p. 462.

THE LAW AND THE PEOPLE

by this very process of the Referendum to make its federal government more and more effective.

CONSTITUTIONAL REVISION

The federal constitution is established for no definite period of time. It exists, as it were, during good behavior, and can at any time be amended or totally renewed. Total revision is undertaken by the Federal Assembly, when both houses agree that such procedure is necessary, or when 50,000 voters demand it.

When one house of the legislature votes for complete revision and the other fails to agree to it, or in case 50,000 voters demand a change and the Assembly does not act upon it, the question must be submitted to popular vote, and if a majority of citizens agree to have the constitution amended, both National Council and Council of States undergo reelection, and the revision is undertaken by this new body.

The actual work of revision takes place according to the usual process of law-making. The constitution of 1874 was laid before the Assembly in the form of a motion of the Federal Council. This was referred to committees in each house, and finally voted on, article by article, by those bodies in full session. The document, as finally passed by both houses, must then be submitted to popular vote. If it receives the approval of a majority of all the people, and at the same time a majority of

GOVERNMENT IN SWITZERLAND

all the cantons, the revision becomes law, and goes into effect as soon as promulgated by the Federal Council. In determining the majority, those cantons which are divided count as two half-votes, and the result of the popular vote in each canton counts as the voice of that state.

Partial revision of the constitution of 1874 began very soon after its adoption. The first amendment restored to the cantons the right to inflict capital punishment for crime. Some of the cantons have placed this punishment in their statutes, but up to this time no use has been made of it. The next successful amendment gave the federal government in 1887 the monopoly of alcoholic liquors, and in 1890 the power to establish public accident and sickness insurance systems was also conferred upon the central authority. In the meanwhile, numerous other changes had been agitated and demanded by popular petition, and some had been presented by the federal legislature and voted down by the people. These proceedings led to an interpretation of the constitution which showed that under the existing law partial revision could be undertaken by the Federal Assembly alone. That is to say, an amendment could be passed by the national legislature and this could be ratified by vote of the people, but there was no obligation laid upon the Assembly to obey a petition, even of 50,000 voters, when it demanded anything less than total revision. If specific points were called in question, and the Assembly was not disposed to

THE LAW AND THE PEOPLE

take the initiative, the only way to advance was to submit the matter to the people as a whole: "Shall the constitution be revised?" If affirmed, it would be necessary to reelect the houses and proceed to revise, changing only the few points demanded.

By this method of voting on the whole constitution in order to obtain partial changes the very framework of the state would have to be put in jeopardy every time an additional clause might be suggested. In order to defeat an objectionable amendment it would be necessary to overthrow the whole fundamental law, or in the contest the nation might be put to such a strain by agitators that it might not easily recover. Fortunately, no such serious crisis was ever reached. The legislature usually met the rational demands of public sentiment, but the simultaneous advance of democracy and centralization in the confederation made the system cumbrous and a cause of discontent. The plan was changed in 1891 by the introduction of the so-called Popular Initiative.

Direct legislation had been for some time in operation in many of the cantons, so it was not a new experiment to add the Initiative to the federal constitution. According to this plan, which we have discussed more at length under the subject of cantonal government, it is no longer necessary to wait for the legislature to take the lead in offering amendments. If 50,000 citizens request the adoption of an article, the Federal Assembly must take the matter into consideration.

GOVERNMENT IN SWITZERLAND

If the request is made only in general terms, and the Assembly is in sympathy with the project, the legislature will elaborate an article of amendment and submit this to popular vote. If not in favor of the idea, the bare question as to whether the constitution shall be revised will be submitted, and if adopted by the people, an article will be worked out afterward. If a formulated amendment is presented in the petition, the Assembly may agree to it, or may submit at the same time a different form of the project, or may offer a counter proposition to reject. The voter will then make his choice at the polls. The legislature must move in the matter within the limits of one year from the receipt of the petition. If at the end of that time nothing has been done, the Federal Council must submit the amendment as offered in the petition.

To sum up, there are five ways in which the constitution may be amended: complete revision on the initiative of the Assembly or on petition of sufficient citizens; partial revision at the suggestion of the legislature as before, or on petition of voters, with or without exact wording of the clauses. As to popular petition, it should be noted that the initiative in federal matters applies only to constitutional amendment, not to the enactment of statute law. Although this prevails in many cantons, the motion to adopt the imperative petition for ordinary federal law was voted down in the Assembly. Yet the boundary line between these two forms of law is frequently overstepped,

THE LAW AND THE PEOPLE

as we shall have occasion to discuss elsewhere, and as may be seen also in the use made of the federal initiative as soon as it was adopted. Since 1891 several important changes in the constitution have been attempted by this method. The first and only successful amendment was voted in 1893 after considerable agitation. This forbade the slaughter of animals by the Jewish method. The movement was started by the society for the prevention of cruelty to animals, but was aided by antisemitic sentiment in general, and by trade rivalry under the pretext of humanitarianism. The Federal Council had appointed an expert commission which reported in favor of the Jewish form of killing animals by cutting the throat and bleeding. The Federal Assembly had refused to pass a law against it, and sustained appeals in behalf of the Jews, yet a petition of 83,000 signers was formed, and by a vote of 191,527 against 127,000 Article 25*bis* was added to the constitution, which now states that animals must be benumbed before bleeding in any method of slaughter.

That there is anything so fundamental in slaughter-house methods that regulations must be put in the national constitution cannot be seriously advocated. It is a case of popular prejudice carried into the constitution because its agitators failed to move the legislature to accept their views. The result might cause uneasiness for the future of Swiss government, were it not for the fact, which has been proved, that the people as a

GOVERNMENT IN SWITZERLAND

whole are conservative, and in no sense given to socialism.

This has been shown by several votes before and since the slaughter-house amendment. In 1892, the government proposed an additional article giving the confederation the right to legislate in the matter of trades. The socialistic party saw in this an opportunity to introduce compulsory trades-unions, and entered into the campaign with zeal. Both houses of the Federal Assembly expressed themselves in favor of the amendment, but against compulsory trades-unions, and when the question came to a vote the people defeated the amendment by a substantial majority.

Another change in the constitution was proposed in 1893-94, to the effect that "the right to have sufficient remunerative labor is guaranteed to every Swiss citizen." Federal law should also shorten the hours of labor, provide free bureaus of information, protect laborers against unjust discharge, provide insurance against lack of work, and authorize several other matters, including the democratic organization of labor in factories. The federal legislature recommended the rejection of this proposition and over 300,000 voters followed their advice against 73,000 in favor.

In the same manner a proposal to pay to the cantons two francs *per capita* out of the federal custom house receipts was defeated by a majority of more than two to one. So likewise a federal monopoly of the manufacture of matches was voted

THE LAW AND THE PEOPLE

down, not to mention various socialistic proposals which did not receive the required number of signatures.

It will be seen from this that the federal constitution of Switzerland is brought nearer to the people than that of the United States, which is adopted solely by the legislatures of the various states; also that it is not so difficult to change, by reason of the fact that the voting is all done on one day, and agitation can be carried on in one campaign, as it were. Instead of forty-five legislatures to be dealt with separately, bodies which may be influenced by the votes of other states, a whole people is called upon to express its opinion at one time, and the result by states is determined by analysis of that vote.

There is a remote possibility that one-third of the cantons, containing a majority of the citizens, might be overruled by a minority in the remaining states, but such a conflict is highly improbable, as it would require the electors of these cantons to vote solidly on one side, allowing for little or no division of opinion. In all the votes hitherto taken on constitutions and laws, the majority of states has been always coincident with a popular majority.¹

¹ An interesting account of the growth of democratic law-making, both constitutional and statute, is to be found in Curti, "*Geschichte der schweizerischen Volksgesetzgebung*."

GOVERNMENT IN SWITZERLAND

CANTONAL LAWS BY TREATY. CONCORDATS

Another matter which should be mentioned in this connection is the method by which the lack of national laws in certain directions is gotten over by means of interstate agreements. When Switzerland was a loose confederation of states, this was the only way by which any approach to uniformity in private law could be reached, and when the new government was formed, some of these agreements were carried over, and served a useful purpose in filling gaps not covered by federal enactment. A few others have been added; some have been superseded in whole or in part by national law.

The federal constitution distinctly forbids separate alliances with foreign states and all treaties of a political character between the cantons, but the right is reserved to make conventions among themselves upon legislative, administrative, or judicial subjects.¹ The central government maintains control over these agreements, and the federal officials are authorized to prevent their execution if they contain anything contrary to the national constitution or any infringement of the rights of other cantons. The covenanting cantons are authorized to invoke the federal government in carrying out these agreements, and in case of dispute respecting the application of the rules, appeal may be had to the federal supreme court.

¹ Fed. Const., Art. 7.

THE LAW AND THE PEOPLE

Owing to the peculiarities of Swiss citizenship, the regulation of the rights of non-residents, or persons not living in the canton which claims them as citizens, occupies the most attention. A list will be sufficient to show to what extent this method of law-making by treaty has been used.

LIST OF CONCORDATS

1. Legal status of non-residents in respect to
 - a.* Guardianship. Thirteen cantons.
 - b.* Inheritance. Twelve cantons.
 - c.* Form of papers of domicile (*Heimatscheine*). All but three.
 - d.* License of surveyors. Ten.
 - e.* License of midwives. Two.
2. Bankruptcy. All but two. (Superseded by national bankruptcy act.)
3. Guarantee of soundness in cattle-dealing. Seven.
4. Depositions in criminal cases. All but one.
5. Requisition of criminals between cantons. Eighteen.
6. Police regulations respecting
 - a.* Gypsies and tramps. All but two.
 - b.* Passports. All but one.
 - c.* License of persons to collect money for benevolent purposes. All.
7. Protection of agriculture against injurious insects. Seven.
8. Religious matters: —
 - a.* Respecting conversion from one confession to another. Fourteen.
 - b.* Call of Protestant ministers from one canton to another. Eight.

CHAPTER XV

THE FEDERAL JUDICIARY (*Bundesgericht*)

THE history of federal courts in Switzerland offers a valuable subject for study in the development of legal institutions, but it must suffice to say here that, at the very beginning of the confederation in the thirteenth century, a method of settling interstate disputes was organized, which, though it took the rude form of committees of referees chosen as occasion demanded, contained the germ of the modern federal court.

Previously to the adoption of the federal constitution of 1848, there was no national legislation, and consequently no basis for a standing tribunal other than a kind of intercantonal court of arbitration. Even under the new constitution the Federal Tribunal for a long time occupied a very modest place in the judicial system. Its competence was limited by the very fact that a body of federal law had yet to be enacted, and only from time to time was the field of its operations enlarged to suit new circumstances.

Its growth as an independent institution, however, was not vigorous. The court did not play the part of the supreme court of the United States in the formation of the young constitution, for the

THE FEDERAL JUDICIARY

Swiss tribunal was not allowed to become the final resort on such questions. This is still the case, for the constitution explicitly states that the laws and decrees passed by the Federal Assembly are to be authoritative for the Federal Tribunal. In fact there was a tendency for a time to draw more and more judicial questions before the legislature itself, and in certain cases the Federal Council also has been a court of appeal. The revision of 1874 gave the court both a more logical character and a permanent seat. The Federal Tribunal now holds its sessions in a fine building in Lausanne, and governs its conduct by a new organic law passed in 1893, with modifications made in 1895. The changes which have taken place in the duties of this court and its growth in the estimation of the public are significant indications of the tendency of government in Switzerland. Permanent steps toward centralization have here been advanced.

The Federal Court, as now constituted, consists of sixteen judges and nine alternates, all of whom are elected by the Federal Assembly for terms of six years. The election is open to any Swiss citizen who is qualified to sit in the National Council, but in making choice, the legislature must see that all three national languages are represented, and that the judges, as well as the functionaries of the court, are in no way related to each other. A president and vice-president are also chosen from among these for terms of two years. Alternates are persons who are called in on occasions where

GOVERNMENT IN SWITZERLAND

the regular judges are unable to serve. The court appoints its own recorders and other necessary clerks. The salaries are 12,000 francs for each judge, with 1000 additional for the president during his term, while the alternates are paid *per diem*, as occasion demands. Judges may not sit in either house of the federal legislature, nor engage in any business or professional occupation.

The civil jurisdiction of the *Bundesgericht* as a court of first instance includes disputes between the confederation and the cantons or between the confederation, on the one hand, and corporations or individuals on the other hand, as plaintiffs, when the amount involved reaches 3000 francs; disputes also between different cantons, or between cantons, on one hand, and corporations and individuals on the other, when the amount in controversy is at least 3000 francs and one party has appealed; controversies between communities of different cantons on questions of citizenship as well as appeals by cantons from decisions of the Federal Council on matters relating to the civil rights of persons who have no legal residence (*Heimatlosigkeit*).

The Federal Court also considers questions which are especially delegated to it by federal law. For a considerable time these related entirely to railways, including right of eminent domain, controversies with the state and individuals, and the liquidation of these corporations, but an increasing body of national legislation has thrown

THE FEDERAL JUDICIARY

greater burdens on the court, and the number of judges has had to be enlarged from nine to sixteen. The national bankruptcy act requires the time of a special chamber to consider its cases.

As a court of revision the *Bundesgericht* also hears certain appeals from cantonal courts where parties agree to carry them up.

The constitutional jurisdiction includes:—

Conflicts as to competency between federal and cantonal authorities.

Constitutional and political conflicts between cantons, as, for instance, the interpretation of intercantonal agreements, conflicts of competence of cantonal authorities, boundary lines, extradition.

Complaints of individuals or corporations against violation of the rights guaranteed in the federal and cantonal constitutions and in the cantonal concordats.

The criminal jurisdiction of the Federal Court covers treason against the confederation, riot and violence against federal authorities, violation of international law, political crimes which have caused federal armed intervention, and cases where a federal official has been handed over to the court by the authority which appointed him. Other criminal cases are referred to the Federal Court by cantonal governments with the consent of the federal legislature.

The court divides itself for the conduct of civil cases into two chambers, of seven members each, presided over respectively by the president and

GOVERNMENT IN SWITZERLAND

the vice-president. For matters arising under the bankruptcy law there is another chamber of three judges. In all these divisions the judges are expected to take turns from time to time.

In certain important matters the tribunal sits "*en banc*," for which the presence of eleven judges is necessary. The questions demanding a full court are chiefly cases of extradition, appeals from the national expropriation commission, and cases of forced liquidation of railways or banks of issue.

For the conduct of criminal business the court is divided each year into four chambers: the Chamber of Complaints, Criminal Chamber, Federal Criminal Court, and Court of Appeals (*Anklagekammer*, *Kriminalkammer*, *Bundesstrafgericht*, *Kassationshof*). All chambers but one consist of three members each. The last and highest, being the final resort in criminal matters, is composed of five judges.

The confederation is divided into three large federal districts (*Assisenbezirke*), and the Criminal Chamber sits from time to time in each. The trial of such cases is always conducted before a jury made up from a list of persons specially elected.

Federal jurymen are chosen in each district in the proportion of one to every 1000 inhabitants. Certain official classes, the aged and sick, are exempt, but all others elected are liable to jury duty during a term of six years. By a law passed in 1889, the office of Federal Attorney-General,

THE FEDERAL JUDICIARY

which had been for a time abolished, was restored. This official is not a member of the cabinet, but appointed by that body and under its supervision. Beside the general duties of a legal adviser and attorney for the confederation, it is the special function of the Attorney-General to enforce the laws respecting foreigners and abuses of the right of asylum in Switzerland. The introduction of the law, consequently, aroused the opposition of the Socialist party and all those turbulent spirits who wished to use this territory as a base of operations against foreign governments. But it is evident from the lack of interest shown in the meagre petition for popular vote on the subject, that the Swiss, while resenting foreign demands for political offenders, intend to make their country a refuge for peaceful citizens and not for plotters.

The fact has already been mentioned that in one aspect the Swiss Federal Court differs widely from that of the United States. In the latter, the constitutionality of the laws, even of the highest legislature of the land, can be brought in question, and if such statutes do not agree with the federal charter they are declared invalid. But in Switzerland the Federal Court can only move within the limits set by the legislature. The Federal Assembly is declared to be the sole judge of the constitutionality of its measures.¹

¹ Yet this does not prevent the court from testing a cantonal law as to its compliance with the federal constitution, as may be seen in the case of the Bank of Freiburg *v.* Cantonal Bank of Freiburg.

GOVERNMENT IN SWITZERLAND

While the principle that the legislature should be supreme might be desirable in a country which had no written constitution, it is doubtful whether the Swiss are so secure in their constitutional rights as they would be under the control of an independent judicial body, unswayed by the winds of politics. With all their facilities for revision of the constitution and for popular expression upon law, it would seem as if the matter of final interpretation should be left to a calmer authority than a national congress.

It is interesting to note that there is no Supreme Court Bar in Switzerland. Not only is there no special admission required for attorneys desiring to practise in this court, but there is nothing to hinder any person from conducting his own case. Attorneys are probably employed in most cases, but this bit of unconventionality, borrowed from the practice in certain cantons, is supposed to make it easy for the humblest citizen to appeal to the highest court.

The judges do not sit in robes, but a rule of the court requires them to appear in black clothing. The same point of etiquette is required of the parties to the suit, attorneys, and court officials as well.

This court may be said to be somewhat in a transition state. The settlement of its functions is a part of the struggle for and against centralization, and we may expect to see the supreme bench become more independent of the legisla-

THE FEDERAL JUDICIARY

ture. Greater power was given it only recently, when the jurisdiction in bankruptcy cases was removed from the cabinet to the court. The widening of the functions of the national government by the purchase of railroads, by the assumption of monopolies, or by superseding cantonal law by general legislation, adds in every instance to the body of federal law which must come under the cognizance of the Federal Tribunal. It is to be hoped that the low limit, which permits too many small cases to encumber the docket, will be raised, and as time goes on the Federal Tribunal will become more and more a forum of law, and less a trier of fact.

CHAPTER XVI

THE FEDERAL EXECUTIVE (*Bundesrath*)

THE chief executive power of the confederation is vested in a committee chosen by the Federal Assembly in joint session, and called the Federal Council.¹

This Council consists of seven members, who are elected at the beginning of every new term of the lower house of the national legislature, and hold office for three years. Any Swiss citizen who is qualified to sit as a representative is also eligible to the cabinet, except that near relatives by blood or marriage, or two persons from the same canton, cannot be elected at the same time. Members of the Federal Council shall not at the same time hold any other office, either state or federal, nor engage in business, nor exercise a profession. They receive a salary from the federal treasury.²

The chairman of the Council is chosen annually by the legislature, and is known as the President of the Confederation. His alternate is called Vice-

¹ Fed. Const., Art. 95-104.

² Salaries at present, for members, 12,000 francs each, with 1500 francs additional for the President. "Amtliche Sammlung," I., 46. Wolf, I., p. 98.

THE FEDERAL EXECUTIVE

President of the Federal Council. The retiring President cannot be elected, either to the same office, or to that of Vice-President, for the year ensuing, nor can the same member serve as Vice-President during two consecutive years.

The duties of the Federal Council are in general to administer the affairs of the confederation, to keep a watchful eye upon the conduct of government, and to guide, in a measure, the course of political activity.¹ Since the composition of this executive is somewhat unusual, it is desirable to look into its functions more particularly.

The constitution provides that the cabinet shall conduct federal affairs, conformably to the laws and ordinances of the confederation, and shall see to it that the constitution, federal laws, and ordinances, as well as the provisions of federal concordats, be observed. Upon its own initiative, or upon complaint, it takes measures necessary to cause these instruments to be obeyed, unless the consideration of redress be among the subjects which should be brought before the Federal Court. The guaranty of the cantonal constitutions is also a matter for its attention.

The Council introduces bills or resolutions in the Federal Assembly, and gives its opinion upon the proposals submitted to it by the two houses, or by the cantons, and, when enacted, executes the laws and resolutions of the legislature, and the judgments of the Federal Court, as well as the com-

¹ Fed. Const., Art. 102.

GOVERNMENT IN SWITZERLAND

promises or decisions in arbitration upon disputes between cantons.

Appointments which are not assigned to the Federal Assembly, Federal Court, or other authority are made by the executive. It examines the treaties made by cantons with each other or with foreign powers, and approves them, if proper.¹ It watches over the external interests of the confederation, and is, in general, intrusted with foreign relations and the maintenance of independence and neutrality. The internal safety of the confederation and the maintenance of peace and order are also obligations of the federal administration. In cases of urgency, and when the Federal Assembly is not in session, the Federal Council has power to raise the necessary troops and to employ them, with the reservation that it shall immediately summon the legislature if the number of troops exceeds two thousand men, or if they remain in arms more than three weeks.

In order to carry out the obligations laid upon it, the Council has the power to administer the military establishment of the confederation, as well as all other branches of administration committed to the national government. All federal officials and employees of the federal administration are under its supervision. Certain laws and ordinances of the cantons must be submitted for its approval, and it exercises supervision over such departments of the cantonal administration as are

¹ Art. 85, § 5.

THE FEDERAL EXECUTIVE

placed under its control. Finally, the Federal Council administers the finances of the confederation, introduces the budget, and submits accounts of receipts and expenses as well as regular reports on the general conduct of government. Special reports are also frequently called for by one or both houses of the legislature.

For the more convenient transaction of business the work of the cabinet is divided into seven departments, having one councillor at the head of each.

Department of Political Affairs.

Department of the Interior.

Department of Justice and Police.

Department of Military Affairs.

Department of Imposts and Finance.

Department of Commerce, Industry, and Agriculture.

Department of Posts and Railways.

Although administration is thus divided up, the heads of departments are not in law the final authority upon questions decided. Decisions must proceed from the Council as a body.¹ All matters directed to the cabinet are opened by the President, and by him assigned to the proper department for consideration. Ministers may decide points coming before them and order their execution directly, if they are so disposed, but it is with the understanding that a vote of the whole council is held in reserve for use when called for.²

¹ Fed. Const., Art. 103.

² Law of Organization, "Amtliche Sammlung," N. F., III., 480.

GOVERNMENT IN SWITZERLAND

The cabinet is a public body in regard to records of its proceedings. The Chancellor of the confederation attends the meetings and prepares the formal acts and papers, while one of his secretaries keeps the minutes. The presence of at least four ministers is necessary for the transaction of business. No member may be absent without excuse, and a roll of those present and absent is regularly kept. Votes are taken *viva voce* on all questions except elections. The latter, as a rule, call for secret ballot. An abstract of the proceedings of the Council is regularly published in the official gazette.

In its capacity as guardian of the constitutional rights of the citizens and the states the Federal Council is in certain matters a tribunal of justice. The complaints which may or must be decided by the *Bundesrath* are of a political or administrative character. For instance, the confederation furnishes every militiaman his first outfit; it has the power to enforce primary education when the canton is negligent; it guarantees freedom of trade between cantons; it forbids the establishment of Jesuits on Swiss territory; it regulates the form of civil registration. All these give rise to difficulties which may need the decision of the Federal Council. Differences between religious confessions cause disputes as to the place where a citizen shall be buried, so that the cabinet frequently has to apply that rule of the constitution which places graveyards under the control of civil author-

THE FEDERAL EXECUTIVE

ities, and declares that every deceased person is entitled to decent burial. The Council recently decided that this included the ringing of the church bell where this was customary, even if the bell belonged to another confession.

Appeals in election cases are frequent, and questions rising out of foreign treaties appear from time to time. Until recently, appeals under the national bankruptcy law were also carried to the cabinet. The volume of this business was so great that the Council was obliged to appoint an expert commission, under the presidency of a chief in the department of justice, to dispose of the cases. In 1895 this jurisdiction was transferred to the supreme court. Cases may be appealed to the federal legislature if the action of the Federal Council appears to be unconstitutional.

Although the members of the Federal Council have similar duties to those of the cabinet of the United States government, it will be observed that the theoretical bases upon which they rest and the sources of responsibility are widely different. In America, as also in the case of all monarchical governments, the executive power is vested in one person, and the members of the cabinet are his appointees and subordinates. Though the cabinet may take counsel together, the action resulting is that of their chief. The various secretaries of the United States government are answerable for their political conduct to no one but the President, and upon him their tenure depends.

GOVERNMENT IN SWITZERLAND

But in Switzerland the federal cabinet is a creation of the federal legislature, and each secretary holds a separate commission. Tenure of office is not dependent on the president, but is fixed by the constitution at a definite term of years. Reëlection is possible, but always at the hands of a new legislature. Practically, cabinets in America have a fixed term of four years, but in Switzerland a faithful official has a legal claim upon a three years' tenure, of which he may not be deprived except by decree of court. Hence this is not a parliamentary ministry which rises and falls with the measures which it advocates. It is usually elected by the party of the majority, but does not feel called upon to resign when one of its bills fails to pass. The proposal of legislation is one of the duties laid upon the Council; it is expected to lead the way in making and changing federal law, but it has no autocratic monopoly of initiative, even within its own party. Any member of the chambers may move the adoption of a bill, but all are submitted to the Council for an opinion, and must be returned within a certain time. The budget is especially its work, and reports must be made on the management of the finances. In short, all bills, whatever their source, at some time pass through the hands of the Council and are stamped with its approval or disapproval.

When, however, projects urged or approved by the cabinet are rejected by the legislature, the ordinary parliamentary result does not take place.

THE FEDERAL EXECUTIVE

The self-respect of ministers is not called in question, because they were elected for the very purpose of giving their honest opinion on legislative proposals, and if this opinion does not agree with that of the legislature, they prepare bills which will be acceptable. Instances are rare where ministers resign on account of disagreement with their colleagues, or with the majority, and tenure usually depends on their own will in the matter. Men who have proved capable administrators are kept in office term after term. Councillors have passed a whole career in the cabinet. Schenk remained continuously in office from 1863 to 1895; Naeff from 1848 to 1875; Welte from 1866 to 1891; and others might be cited who have served from ten to twenty years. This long tenure has been partly due to the fact that the same party, or some shade of it, has been in power most of the time; but parties have not always upheld the projects of their own ministers, and yet when their terms expired have given the men a reelection. It has also happened that good executive abilities have brought men of different parties into the same cabinet, and the machinery of government has run as smoothly as if there were no political differences. One reason for this is that the cabinet endeavors to compromise its own differences before going before the public. If a law is to be proposed, or an opinion to be rendered on a bill before the legislature, the Council desires to act as a unit. A certain *esprit de corps* prevents antagonism outside

GOVERNMENT IN SWITZERLAND

its own doors, and thus the opinion of the cabinet carries great weight.

It will be observed that such a thing as a "cabinet crisis" is out of the question. Violent and rapid changes of ministries, one of the chief objections to parliamentary government, are overcome by the fixed tenure of office, and, although the legislature has opportunity once in three years to renew the national executive, public opinion, or tradition, or business instinct, whichever it may be, keeps the faithful officer in place. Consequently, the administration of affairs has reached a high degree of perfection.

Rotation in the office of President has had its drawbacks, because of the changes in other departments. New members were liable to follow the whole round of portfolios, until the last regulations made the changes less necessary. The government would gain strength if the political department were still more stationary. It is important that foreign affairs be handled with great delicacy by persons who have been long in that service.

Swiss cabinet officers are, it is true, more like the heads of bureaus in other countries than like the political ministers of France or England. They are immediately in contact with the details of their various departments, as well as guides and directors of policy. They are not even provided with private secretaries, and, therefore, are obliged to attend to a quantity of small matters which could easily be performed by persons of

THE FEDERAL EXECUTIVE

less prominence. Hence two kinds of ability are called for which may not always be united in the same person, namely, genius for details and great political insight, and the one may be cultivated at the expense of the other. But, however that may be, the Swiss have learned much in the science of administration, for in all departments they succeed in showing remarkable results for the resources at command. It cannot be said that the pecuniary inducements to enter political life are great. Cabinet officers are obliged to live like modest citizens with no distinctions of residence, guards, or equipage. But the honor attached to the office and the reasonable security of tenure have been sufficient to draw out an eminently respectable class of men who have served their country well.

From time to time during the past twenty-five years proposals have come forward for the election of Federal Councillors by popular vote. The agitation usually comes from minority parties who see in this a means to obtain legislation in their own favor. It is urged that it would be more democratic for the people to elect their own cabinet than to leave it to a legislature which might be ruled by the larger cantons. It is not in place here to criticise a system before it is adopted, yet this is a movement of doubtful expediency, concerning which the people will one day have to decide.

CHAPTER XVII

THE FEDERAL ARMY

THE record of its deeds of war has been for centuries the proud heritage of the Swiss nation. By force of arms six hundred years ago the republic sprang into being; by the same power its independence was assured, and through its martial reputation Switzerland became the arbiter of Europe. It was not only because of deeds of astounding bravery that the Swiss soldier was sought for by all the armies of the continent, but also on account of tactical skill and precision in the use of arms, for in more than one respect his methods affected the development of military science. Some of the heaviest blows to ancient practices of warfare were administered by the infantry of Switzerland when in conflict with the iron-clad cavalry of Europe on the fields of Grandson and Murten, and at other times their movements were the admiration of the military critics of the day. Even in the cause of aliens the hired soldier from the Alps displayed a steadiness and courage which made him irresistible in fair battle and unconquered in the worst of odds. The monument at Luzern to the Swiss Guard who fell before

THE FEDERAL ARMY

the mob in Paris is a testimonial of their bravery down to the last days of foreign service.

But during all the heroic age of Switzerland there was no permanent national organization of military forces. Each canton furnished its contingent under a separate flag, companies were made up of neighbors and relatives, and each part was governed by the rules of its own district. The old war ordinance of 1393, the *Sempacher Brief*, commands that cowards, deserters, or other breakers of its provisions shall be tried by their own land or city, and if "one be found guilty before them to whom he belongs and whose duty it is to judge, he shall forfeit his life and goods to them to whom he belongs, and to *no one else*."¹ In other words, a federal law against treason, but local trial and execution.

In fact, all the way down to the present century the management of military matters, as a whole, has been more or less at haphazard. This accounts for the weakness of national defence during the period of decadence. Notwithstanding several agreements on the subject, the cantons could not be made to work harmoniously and with precision just at times when coöperation was most needed.

Hence when military affairs came to be considered in the construction of the new constitution, there was a large fund of experience to be drawn upon in the history of the nation itself. There was also the perennial spirit of state-rights to con-

¹ "Eidgen. Abschiede," I., 327.

GOVERNMENT IN SWITZERLAND

tend with, and the result was a compromise between the desire to have a strong military system and the fear of making it too strong. Power was in all directions dealt out sparingly to the central government, but especially in the management of the army was there a fear that too dangerous a weapon of oppression might be put into its hands. So the states retained as much control as possible consistently with general unity of administration. After the new arrangement had been tried a few years it was found better to let the federal government have a little more control, and the present system was introduced in 1874, but all attempts to turn military matters entirely over to the central War Department have hitherto failed. In 1895 amendments to the constitution were offered by which the confederation was to assume all the responsibility for the management of the army. The country was to be divided into districts and military matters administered by the War Department without the assistance of the cantons. The project was rejected by popular vote. Tendencies appear to show, however, that in the end that surrender will take place.

In Switzerland a standing army has never been a recognized institution. For a few years during the Helvetic Republic the country was obliged to maintain permanent troops for the benefit of France, but this was not done willingly. Before that time the federal idea was too feeble to sustain an army, and afterward, when the central

THE FEDERAL ARMY

government was established more firmly, the fear of tyranny prevented it. Nor yet are the cantons allowed, without special permission, to keep standing forces beyond three hundred men each, outside of the mounted police, and of this privilege they do not avail themselves.¹ On the other hand, every citizen is liable to military duty,² and the federal government makes the regulations under which he serves, establishes the system of instruction, drill, clothing, form of weapon, the formation of divisions, and in time of war takes exclusive command. The cantons assist somewhat in the administration, look after the available forces of their particular territories, retain the power to appoint and promote the officers of their corps as far as the grade of major, attend to the clothing and arming of their contingents, but always according to the rules provided. The military exemption tax is collected by the cantonal executive, but the law was enacted in the first place by the national legislature. The central government maintains establishments for the manufacture of cartridges, small-arms, and cannon, and holds a monopoly of gunpowder, hence is in a position to assume at any moment of danger complete control over all the forces of war, both men and munitions.

The organization of the federal army is carried out with elaborate exactness. As stated above,

¹ Fed. Const., Art. 13.

² *Ibid.*, Art. 18.

GOVERNMENT IN SWITZERLAND

every able-bodied citizen, not otherwise engaged in specified government service, must be enrolled in the militia, and continues in some form, to the age of fifty, a part of the national defence. For this purpose, the forces are divided into three general sections, according to the age of the men composing them. The active army (*Élite, Auszug*) consists of all men liable to service between the ages of twenty and thirty-two; the first reserve, national guard (*Landwehr*), is composed of those between the ages of thirty-three and forty-four, while the *Landsturm*, or second reserve, which would be called out only in case of dire necessity, consists of all the men between the ages of seventeen and fifty not otherwise enrolled in the *Auszug* or *Landwehr*.

On coming of age, every young man is entered on the list of recruits, and if, after medical examination, he is found available, is sent to one of the schools of instruction for about six weeks of his first year. After that he is liable to be called out two weeks every other year (cavalry, ten days every year) during his term in the active army, to go into camp for military drill. On reaching thirty-two, the militiaman is mustered into the reserve, where he is no longer subject to annual drill, but must present himself one day in the year for inspection and is called out once in four years for practice courses of five or six days. The regulations differ for officers. Those who desire promotion in the various branches of the army must

THE FEDERAL ARMY

follow courses of higher military instruction and spend considerable time each year in conducting drills and manœuvres.

The soldier retains his arms and accoutrements in his own house and must keep them in good order. He must practice shooting at a target so as to be able to show a record of a given number of shots, or be subject to a fine. The traveller observes shooting galleries in the outskirts of every town, and on Sundays and holidays the air resounds with the crack of musketry. Competition in marksmanship is encouraged by giving prizes to shooting clubs. Local and cantonal contests are frequent, and the national festivals (*Schiützenfeste*) are occasions on which the president of the republic feels honored to make an address. A very practical use is thus made of a natural desire for competition, and at the same time an historical institution is kept alive, for the Swiss have been holding shooting matches continuously ever since the days of the bow and arrow.

Education for military duties begins, in reality, when a boy has reached his tenth year; for gymnastic training under competent teachers is obligatory upon all sound youth, whether attending school or not, until fifteen years of age. The method and scope of instruction is carefully presented by federal law and is carried out by the cantonal administrations.¹ In 1896 all but about ten per cent of school children were taught military gymnastics.

¹ Wolf, II., p. 162, etc.

GOVERNMENT IN SWITZERLAND

Thus, without maintaining a large standing army, great care is taken in the instruction and exercise of the militia, a record being kept of every available man and where he may be found, so that when troops are wanted they may be instantly called together. The *Landsturm*, or last reserve, has been recently placed on a higher footing, and a part of it permanently provided with arms, so that, when called out, it may enter the army in connection with other divisions. The citizens of Switzerland are, consequently, to the last man an army in ambush. The confederation could at a moment's notice put more than 280,000 men in the field, or, if necessary, nearly 500,000 would rise to its defence. This is not large, as great armies go, but a substantial force for so small a territory.¹

Indemnity for sickness or loss of life incurred while in the service is provided in a modest system of pensions. The maximum amount to be paid in ordinary cases is a single sum of 1200 francs or an annual pension of 650 francs, but this may be doubled where the soldier was wounded or killed while performing voluntarily some very dangerous duty. The smaller payments are regulated according to the gravity of injuries received and the number of children in the family.²

¹ The active force (*Auszug*) of the federal army on January 1, 1899, numbered 148,435 men and officers. The First Reserve is about 83,000 strong. The armed Second Reserve numbers about 56,000, and the unarmed Reserve or *Landsturm*, of the last call, about 215,000.

² The pension bill for 1897 called for 40,945 francs! The total

THE FEDERAL ARMY

Switzerland's mode of defence is thus in striking contrast to that of the great powers surrounding her. No great army is apparent to the eye in time of peace. No draft upon the youthful strength of the nation withdraws for terms of years a large body of workingmen into an unproductive occupation, yet by careful organization and short periods of drill the whole able-bodied male population has been made into an army. We are carried back to the old Germanic idea of the folk as "the people in arms."

It is interesting to see how this has all been done under a democratic instead of an absolute form of government; how the army itself is yet to a certain degree republican, and how precision of movement in military affairs is not incompatible with local independence in other departments of state. The natural defences of the country have been guarded to the best advantage. Great care has been expended upon the engineering works of the frontier, and means have been provided for rapid communication between all parts. Yet, after all, the mainstay of the Swiss Republic will be the sturdy patriotism which has been for centuries the bulwark of its liberties. It is the judgment of competent observers that the soldier of Switzerland is particularly gifted with that spirit which makes all the difference between a fighting

cost of the Military Department has been for some time about 22,500,000 francs a year, or a little over one-fourth of all the expenses of the state.

GOVERNMENT IN SWITZERLAND

machine and a man at war. It is to be hoped that no occasion will occur for its display, but when the time arrives, this robust love of country, infused through citizens in arms, will make a small force great.¹

The extent to which an army is needed in Switzerland is, however, regulated in great measure by conditions outside its own boundaries and by the agreements of the European powers. These matters will be considered in the next chapter.

¹ The statute organizing the army, dated Nov. 13, 1874, is published separately, and in "Amtl. Samlg." N. F., I., 257. Changes made since then are in later volumes, and in Wolf's Collection, II., pp. 1-314.

CHAPTER XVIII

INTERNATIONAL RELATIONS

THE geographical position of Switzerland has determined in more ways than one the history and politics of the nation. While yet a part of the Holy Roman Empire, its mountain isolation gave its growth a peculiar tendency; when oppressed by grasping feudal lords, its natural configuration provided the bulwarks of defence and bred the courage of the defenders, and in modern times the situation between four great empires not only suggests an international policy for its legislators, but guarantees its fulfilment.

That policy since the beginning of the sixteenth century has been neutrality. There was a time when Switzerland held the balance of power in Europe, and whoever had her soldiers on his side had won half the battle in advance. But after the unlucky outcome of the wars in Italy, when fellow-citizens sometimes fought on opposite sides, the Swiss decided that it would be better not to mingle in foreign affairs. The mercenary service could not be abolished at once, but the country gradually withdrew from entangling alliances which committed it to the cause of any one of its neighbors. With the exception of a brief and nearly fatal ex-

GOVERNMENT IN SWITZERLAND

ception, during the period of the Helvetic Republic and under Napoleon's Act of Mediation, this rule has been adhered to. This position became a fixed fact in the international relations of Europe, and one which had an interest for the foreign nations as well as for the Swiss. This rule of conduct became a law and finally crystallized in the act of the Congress of Vienna, which bound the high contracting powers, not only individually to respect, but conjointly to defend, the neutrality of Switzerland.

Furthermore; neutrality is specifically ordained in the Swiss constitution of 1848: "No military capitulations shall be entered into." By this an historical evil was given its final quietus, but custom had preceded the rule.¹ The memory of ancient troubles might well have reënforced the dictates of political wisdom, for the party distractions of centuries had their roots in the foreign military agreements entered into by the old confederation and by the cantons apart.

Under the new confederation steps were at once taken to prevent individual recruiting also. The wars of the second half of the century offered many temptations, and the government was not completely successful at the start. But in 1859,

¹ One exception remained for a time. A long-standing capitulation with Naples had to be continued, as the government did not feel empowered to impair the obligation. But in 1859, the Swiss regiment in the service of Naples was pensioned off, and the flag has never since followed a foreign army.

INTERNATIONAL RELATIONS

entrance into foreign service was forbidden, except under permission of the Federal Council for purposes of military observation, and persons attempting to gain recruits on Swiss soil were subjected to severe penalties.

The wisdom of this course is evident. As an ally of one or more of the great powers its influence would not be great, and its individuality would soon be swallowed up. As an independent nation, taking neither one side nor another, it provides best for its own citizens and serves as a barrier between contentious nations.

To maintain this neutrality the Swiss have not depended on the good will of nations alone. The active duties of a neutral have been met, in the first place, by an elaborate system of military defence, which includes not only the army previously described, but also heavy fortifications at the strategic points of the frontier. If Switzerland were allied to any one of the neighboring powers, the Alps would be of immense service to the outsider, and would excite the jealousy of others without profit to the Swiss. Held neutral, these strong points give assurance to all concerned.

The position of Switzerland was severely tested in the Franco-Prussian war of 1870-71. The government was compelled to send strong forces to its eastern frontier to prevent both the French and the Germans from using the mountain passes as short routes back into French territory. But when the French were finally checkmated the Swiss fulfilled

GOVERNMENT IN SWITZERLAND

the duties of a hospitable neutral by receiving and caring for the disarmed forces of Bourbaki.

To prevent complications arising from personal relations, the constitution provides that neither the members of the federal government, nor officers or soldiers of the army shall receive pensions, titles, orders, or presents from foreign powers. This was one of the sources of corruption which undermined the political life of mediæval Switzerland. National policy was guided by men who were in the pay of neighboring governments, and as their wealth increased, the independence of the country faded and vanished. Happily, the nation did not need to wait for a constitution to revive its self-respect, for patriotism had already asserted itself, and the prohibition here declared was but a preventive of an evil now no longer feared. The United States would seem to have had the fear rather than the experience of this evil when the framers of the constitution enacted the similar prohibitions.¹ Yet doubtless both were wise in removing temptation.

Switzerland has also recognized rights on the sea as a neutral nation, a fact which at first sight might seem superfluous to a people without a sea-coast or a ship. But the commercial interests of the country, sending wares to all parts of the world, are so large that in time of war they become a matter of great concern. Hence the treaty of Paris of 1856, respecting neutral flags,

¹ United States Constitution, Art. I., Sec. 9-10.

INTERNATIONAL RELATIONS

neutral goods on vessels of belligerents and blockades, was also accepted by the Swiss.

Diplomatic relations are maintained with foreign countries by ministers plenipotentiary in France, Germany, Austria, Italy, and the United States, while commercial affairs require the attention of consuls in all parts of the world.

It cannot be said that Switzerland has ever carried out a "brilliant" foreign policy. Acts of intervention and mediation in the affairs of nations have not been the vocation of so small a state, but the Swiss have stood manfully for their own rights, as occasion demanded, and especially for the right to make their country an asylum for the oppressed of every nation. This has not been an easy task, for vicious classes have taken advantage of this freedom to make Switzerland a base of attack upon other countries, but the government has always endeavored to maintain the rights of man without countenancing schemes of anarchy. To do this without offending the powerful monarchies by which they are surrounded has required a large measure of courage, skill, and diplomatic tact.¹

The law on the subject of extradition does not permit Switzerland to become a refuge for criminals. On general principles the government will

¹ See Hilty, "Neutralität der Schweiz in ihrer heutigen Auffassung." Bern, 1889, pam. 69 pp.

Hilty ("Politisches Jahrbuch d. Schweiz," 1887, pp. 669-718), "Die schweizerischen Neutralitätsverhältnisse," describes the frontier in detail, and gives an historical account of Swiss neutrality.

GOVERNMENT IN SWITZERLAND

deliver up no person who has committed simply a political offence. But if in connection with political action he has committed felony or crime under the common law, he can be extradited when the Supreme Court has established the nature of his acts.¹

Owing to its neutrality and to its central position, Switzerland has in recent years played an interesting part in the peaceful occupations of the nations. The Alps have become a centre of influence for the improvement of the international relations of the civilized world. It was at Geneva, in 1864, that the first convention was held to consider the condition of the wounded in battle, and out of this grew the world-wide Order of the Red Cross. At Geneva the first great court of arbitration of the century met in 1871, to settle the difficulties between England and the United States. World-conventions of various kinds are frequently held on Swiss territory, but matters of very practical importance are regularly conducted in Switzerland for the benefit of the nations at large. The Universal Postal Union has its headquarters in Bern, and its director is a Swiss appointed by the government; so, likewise, the International Bureau of Telegraphs, the Bureau of Copyrights, and the Central Bureau of Railway Transportation. These are offices of great economic significance, and two of them are directed by former presidents of the republic.

¹ Federal Law of 1892.

INTERNATIONAL RELATIONS

Switzerland is naturally included in treaties on many other subjects. Those mentioned are distinctly combinations of the European powers, and are forecasts of the parliament of nations which may come in the future. In fact, it is hardly too much to say that Switzerland has a mission in the midst of the peoples of Europe. This little country has already taken the initiative in certain of these international movements, and its neutral character makes it possible to inaugurate more, or to be the agent of the other powers. Her mission as a leader in popular government may not have any higher character than that of benevolent monarchies, but Switzerland is nevertheless an example in democracy, and a miniature experiment ground of practical politics, which is being observed with more and more interest by the nations at large.

CHAPTER XIX

FEDERAL FINANCE

NATIONAL finance in Switzerland is an institution of the nineteenth century, and with slight exception, entirely a product of the latter half of that period. Up to 1848, almost the only approaches to a system of federal taxation or control of money were the measures taken to provide for army expenditures, and those were necessarily meagre, because the states equipped and put into the field their own contingents.

The machinery of central government was inexpensive to operate because there was little of it, and undertakings for public welfare on a large scale were either omitted or paid for by contributions from the states. Under the constitution of 1815 there did come into existence a national military fund¹ for the support of the army and to provide for national defence. This fund was made up partly by a war indemnity of three million francs which France had been obliged by the second treaty of Paris to pay to Switzerland, partly by unexpended interest of this, and lastly by a very low import tariff.² The amount was never very

¹ Eidgenössischer Kriegsfond.

² Orelli, "Staatsrecht," p. 53.

FEDERAL FINANCE

large, but formed a convenient war-chest, sufficient to put the army in motion at a moment's notice. By the year 1846 it had increased to over four and a half million francs, but the *Sonderbund* war of 1847 in a few weeks reduced this by nearly half, so that the new confederation inherited a bank account of 2,787,180 francs, a balance over expenditures of about one million unpaid indemnities due from seceding cantons,¹ and no machinery for collecting any more.

Hence the framers of the constitution were obliged to create almost an entire new set of financial resources for the federal government. They did not invent many new expedients, but adapted to the confederation such as were already in existence in the states. But if there was no violent adoption of untried financial measures, there was an instant and visible competition with the states on their own ground. The latter were raising money by duties on imports, by excise and other indirect methods, as well as by ordinary forms of direct taxation. Hence the proposed federal government had to meet both the long-standing jealousy of central power, and the newly roused opposition to an infringement of cantonal taxing privileges. The resulting articles in the constitution were compromises between the two tendencies.

The nearest approach to a general principle governing the two taxing powers is the understand-

¹ In 1852, for political reasons, these indemnity debts were forgiven.

GOVERNMENT IN SWITZERLAND

ing that the federal government shall rely upon indirect, and the state governments upon direct taxation. This is true only in a large sense, as we shall see that some state revenues are derived by indirect means; but where federal revenues approach the direct class, as in the case of the military exemption tax, the states take a hand in the administration.

The regular sources of revenue are enumerated in the constitution as follows:—¹

- a.* The income from federal property.
- b.* Proceeds of the federal customs levied at the Swiss frontier.
- c.* Proceeds of posts and telegraphs.
- d.* Proceeds of the powder monopoly.
- e.* One-half of the gross receipts from the military exemption tax.
- f.* Contributions of the cantons, which shall be determined by federal legislation, with special reference to their wealth and taxable resources.

The federal fortune consists of loan funds, real estate, buildings, fortifications, powder mills, and other property, some of which is productive, but a large part is probably only a source of expense. The income from the domains amounts to less than one per cent of the total revenue, while the cash capital produces varying returns, according to the condition of the loans; usually a very small part of the budget.

By far the greatest source of revenue is the

¹ Fed. Const., Art. 42.

FEDERAL FINANCE

tariff on imports. As soon as the new constitution could be put into working order, steps were taken to tax, on a single uniform plan, articles of commerce entering from foreign countries. The measures which were followed were entirely financial and in no sense prohibitive or protective. This was the character of the law passed in 1849, and the same ideas have prevailed ever since. Changes have been made, from time to time, to correspond with new conditions or new commercial treaties, but the government has always kept as near free trade as good financiering would allow, aiming to tax necessities lower than luxuries, and to lay as little burden as possible upon materials needed in the industries and agriculture of the country.¹ The system of assessment of duties differs from that of England, in that, instead of a few articles being selected to stand as much duty as they will bear, a large number, almost every commodity, in fact, is taxed a little. The schedule of rates contains over seven hundred classes of articles which are subject to import duty.² Certain commodities, chiefly raw materials or waste products for home manufacture, are admitted free, sometimes through treaties of reciprocity, sometimes without. A few export duties have also been in existence since 1849, chiefly on timber, live stock, and certain raw

¹ Fed. Const., Art. 29.

² "Volkswirtschafts-Lex.," p. 481-517. *Tariff Laws in Wolf*, p. 437, etc. See also U. S. Special Consular Reports, Vol. XVI., 1899.

GOVERNMENT IN SWITZERLAND

materials. But the amount of revenue from this source is very small, and the percentage, in comparison with the receipts from imports, constantly decreasing. On the other hand, the income from import duties steadily rises as commerce expands. The modest budget of 1849, of some four millions, will mark its fiftieth anniversary by yielding fifty millions of francs.

The next large figures in the national budget are the gross receipts from the Department of Posts and Telegraphs, in which the carrying of the mails yields the most, the telegraph and telephone about one-fourth of the whole, and railways as yet an inconsiderable amount. But the expenditures of this department are always nearly as great as the income. The rates of postage are low and the facilities excellent. As in most civilized countries, the postal service is administered as a public convenience rather than as a financial resource.¹ The franking privilege is extended to local as well as state and national officials, hence there is a heavy expenditure for gratuitous services. For some years

¹ See chapter on The Confederation and Society. The budget estimates for 1899 placed the Post Office Department at 32,499,000 francs; expenditures, 31,933,000 francs. The income from Telegraphs and Telephones was estimated at 9,484,000, and the expenditures about the same. The rates of postage are 5 centimes for local, 10 centimes for general letters, newspapers 1 centime per 50 grammes. In the amount of correspondence transported per inhabitant, Switzerland stands above all the other countries of Europe except Great Britain; it expends relatively more on its postal service than any. See "Volkswirth.-Lexikon," "Post."

FEDERAL FINANCE

the federal government has also had the power to lay a tax of fifty francs upon every kilometer of railway in active service, whenever the net profits of management, after providing for a sinking fund, shall reach four per cent. Should the profits exceed four per cent, the tax may be increased to a maximum of two hundred francs per kilometer. Hitherto, this has amounted to very little.¹

The powder monopoly yielded at one time considerably more than was expended upon it. While large quantities of powder were in demand for quarrying and for great engineering enterprises in connection with railways, the government was able to regard it as a thriving business, but when new and more powerful explosives² came into favor, this industry was obliged to fall back into the function for which it was originally intended, namely, to be a certain and secure source of ammunition in time of war. The highest returns were made in 1858, when the net gain was 238,211 francs. Since then the profit has been as low as 43,426, and has never again reached the high-water mark.

The military tax is laid upon all citizens liable to military duty who do not perform personal service with the troops. As stated in another place, every able-bodied man is under obligation for a certain

¹ "Amtliche Samlg.," XI., I., Art. 19. Wolf, p. 586. A list of objects of taxation in Switzerland will be found in U. S. Consular Reports, Nos. 99-100, 1888.

² Fed. Const., Art 41. Explosives not available as gunpowder are exempt from the monopoly.

GOVERNMENT IN SWITZERLAND

period to go into camp with the militia and to be called out as occasion requires. Persons who do not pass the physical examination must pay a tax instead. This is based on both property and income, and consists of, first, a personal or poll tax of six francs, second, a property tax of one and a half francs for each thousand francs of net fortune, third, an income tax of one and one-half in one hundred francs net income. Properties of less than 1000 francs and the first 600 francs of income are exempt from this taxation; the burden laid on any one man shall not exceed 3000 francs a year, and from the thirty-second to the forty-fourth year of age only one-half the ordinary assessment need be paid. Yet in years when the greater part of the active army is specially called into extraordinary service, the federal legislature has the right to raise the tax to twice the normal rate.¹

Even Swiss citizens who are residing abroad are liable to the military tax, lists being made out each year and notifications sent from the canton where the person is a citizen. Parents are responsible

¹ In the levy of this tax net fortune is made to include all real and movable property minus debts and encumbrances. Agricultural property is listed at three-fourths of its selling price, and household goods and tools are exempt. Net income comprises the receipts from the pursuit of any art, profession, business, industry, office, or employment. The expenses incurred in obtaining these earnings are deducted, also necessary household expenses and five per cent of the capital invested in a business. Annuities, pensions, and other similar revenues are included in the calculation of income.

FEDERAL FINANCE

for minor children and for those persons who, though of age, remain a part of their household. The levy is made and the tax collected by the cantonal governments, which retain one-half of the gross receipts and turn over the balance to the confederation.

The confederation may also call upon the cantons for direct contributions according to their ability to pay, and a scale has been established by which the quota of each state is measured. This law was passed in deference to the old ideas of state-rights, which were like those found in the first American confederation. The notion of a direct tax laid upon individuals by the central government was repugnant, but the cantonal government might pay the same amount in a lump sum at a fixed rate per inhabitant. Various considerations govern this scale, as population, nature of the country, character of industries, and ability to pay. Having balanced all these with one another, the cantons were divided into classes with graduated rates, rising from ten to ninety centimes for each inhabitant. The lowest is the sparsely populated mountainous district of Uri. Such large and prosperous states as Zürich, Bern, Aargau, Vaud, and Neuchâtel are returned at fifty centimes, while the highest rate is placed on the thickly settled and thriving industrial city of Basel. The schedule is an interesting comparative table. By the law of 1875 the rate was fixed for twenty years on the basis of the census of 1870, according to which

GOVERNMENT IN SWITZERLAND

the amount upon which the confederation could rely is 1,172,224 francs; but this may better be considered a financial reserve, since the tax has never been called for.¹

Since 1881 the central government has used its privilege of inspecting and controlling banks of issue. Federal laws regulate the amount of notes to be circulated, the reserve fund, the method of redemption, and the publication of reports.² The government cannot assume the emission of notes as a monopoly, nor guarantee the notes in circulation, but by uniform laws it assists in making business regular and safe. The Federal Council may even demand daily statements of accounts. In return for this supervision, a tax is levied on such banks at the rate of one franc for every thousand in circulation.³ A proposed law giving the federal government the sole right to issue notes was again submitted to popular vote in 1897, and defeated by a large majority.

¹ Scale of taxation for the army contingent fund:—

Class I., 10 centimes per inhabitant. Uri.

Class II., 15 centimes. Obwalden, Nidwalden, Appenzell Interior.

Class III., 20 centimes. Schwyz, Graubünden, Valais.

Class IV., 30 centimes. Glarus, Zug, Ticino.

Class V., 40 centimes. Luzern, Freiburg, Solothurn, Basel-Land, Appenzell Exterior, Schaffhausen, St. Gallen, Thurgau.

Class VI., 50 centimes. Zürich, Bern, Aargau, Vaud, Neuchâtel.

Class VII., 70 centimes. Geneva.

Class VIII., 90 centimes. Baselstadt.

² "Volkswirtschafts-Lexikon," p. 557.

³ In 1891, after an experience of ten years, the returns were about 175,000 francs. The second decade will show further gains.

FEDERAL FINANCE

There are also many small items which go to make up the revenue of the various departments which need not be mentioned here. Fees for naturalization, registration of patents and of commercial houses, and a multitude of other rivulets contribute to the grand total.

A matter which is perhaps related as closely to the morals as to the finances of the confederation is the alcohol monopoly. This might also be treated properly under the head of cantonal financiering, were it not that the administration is entirely in the hands of the central government. But as yet neither the social nor the fiscal elements have had time to show their fullest results, and we can do little more than to state the law and some things expected from it.

In adjusting the complicated claims of state and confederation to the various channels of revenue, the makers of the constitution of 1848 allotted the taxation of spirituous liquors to the former. The cantons were allowed to levy excise duties at their borders, and communities could lay additional taxes on spirits entering their gates.

This arrangement was indeed a restriction of the guaranteed free trade within the confederation, but was a compromise which seemed almost necessary to settle the dispute between central and local government. In the revision of 1874, however, in return for the assumption by the confederation of greater responsibility in military affairs, it was agreed that the cantons should drop all

GOVERNMENT IN SWITZERLAND

duties on liquors after the year 1890. But this date was anticipated, first, by the constitutional amendment of 1885,¹ which placed the power of making general laws on the subject in the hands of the confederation, and, second, by the statute passed in 1887, and adopted by popular vote, which made the manufacture of alcoholic liquors a federal monopoly.

The project brought about much discussion, but the way had been prepared by extensive investigation of the systems of other countries, and the vote showed that two-thirds of the people were in its favor.² The system is not an entirely new venture, but Switzerland has perhaps gone into the matter more scientifically than has ever been done before, and her experiment will be watched with interest.

The principal features of the Monopoly Law are these: the right to manufacture distilled liquor belongs exclusively to the federal government; which may, however, make contracts for the manufacture of such spirits either with home or foreign distillers, but at least one-fourth of the quantity required must be manufactured by domestic companies, to which the government makes allotments from time to time. In order to encourage agriculture, however, the distillation of certain native fruits and roots is exempted from the monopoly

¹ Fed. Const., Art. 31b, 32bis.

² Translation of this law in U. S. Consular Reports, No. 81. Some details have been modified since this was published.

FEDERAL FINANCE

and made free to any one. This practically makes the confederation the sole distiller of all alcohol made from grain, potatoes, and other articles from which the higher grades of liquor are made.

The government is also a distributor of liquor in quantities of not less than 150 liters, and fixes the prices itself. Spirits used for technical and household purposes must be sold at cost of manufacture, and before delivery are to be reduced (*denaturirt*) by the addition of wood-spirits, or other mixtures which render them unfit for drinking. With the exception of spirits of the kind just mentioned the peddling of liquor from house to house is entirely forbidden. Retail dealers require a license from the cantonal authorities where located, and pay a graduated tax according to the amount of sales. The traffic in quantities above 40 liters is considered wholesale and under no restrictions.

The administration of the liquor business, as will be observed, is entirely in the hands of the federal authorities until the spirits reach the retail dealers; there the cantons step in to regulate the number and character of the dram-shops, to make any necessary sumptuary and police laws, and to exact such license fees as may seem best.

The net profits of the government management are collected by the federal authorities, but divided entirely among the cantons in proportion to population. The cantons, on their part, are obliged to expend at least ten per cent of this dividend in

GOVERNMENT IN SWITZERLAND

suppressing the evils of intemperance, and to report annually to the federal government.

The transition from private to government manufacture was accomplished not by confiscation but by indemnification. Distilleries, in order to continue operations, must be large enough to supply at least 150 hectoliters a year; all others were obliged to shut down, but received the minimum value of their plant, not counting the good-will of the business, by way of damages. This change had the effect of closing up about 1200 establishments,¹ at a cost of 3,655,095 francs.

But this was not the only financial problem laid before the federal government at the inauguration of the new system, for at the same time that the monopoly was placed in its hands,² the law took effect³ that if a statute on this subject was put in force before 1890, the losses to the cantons from the abandoned tariffs and excise duties should be made good. As the law went into operation on the first of September, 1887, indemnity for the taxes of three years became due to sixteen cantons and two communities. For the years 1887-88 this amounted to 5,423,020 francs, and absorbed all the profits of the monopoly and 465,000 francs more; but in 1889 the business had gotten firmly on its feet, and not only were the cantonal deficits paid, but 884,565 francs divided among the other states.

¹ Leaving but 68.

² Const. Amendment of 1885, Art. 32*bis*.

³ Fed. Const. Uebergangsbestimmungen, Art. 6.

FEDERAL FINANCE

The monopoly is protected from outside competition by a tax of 80 francs per hectoliter upon all high grade liquors brought into the country, and by a graduated scale of duties upon all containing less than 72 per cent of alcohol. No one except the government is permitted to import alcohol for industrial purposes, because the reducing process must undergo inspection in order to prevent fraud. In getting its supply for the market the government may purchase three-fourths of the demands for all kinds anywhere it chooses. The other fourth, as mentioned above, must be of home manufacture, and the government has not exceeded that limit because spirits can be bought cheaper abroad than at home. In fact, the prices have become so low that the confederation practically pays to its distillers a large annual bounty for the home product.¹ Almost all the alcohol intended for industrial purposes comes from Prag, Vienna, and Pilsen, and is disposed of at a price to correspond with the cost of home manufacture. Liquors for drinking purposes are contracted for at prices obtainable in the market and sold at a considerable advance, which is fixed by law. The distribution is effected through nine depôts, located at various convenient points.

The financial operations of this branch of administration amount to millions of francs, and the net profits are fully 50 per cent. This is chiefly

¹ In 1897 this was estimated to be one million francs. Hilty, "Jahrb.," 1898.

GOVERNMENT IN SWITZERLAND

due to the mercantile profit on liquors for drinking purposes, since industrial spirits must be sold at cost. Hence, as a business enterprise the monopoly is a success. As a system of taxation it is far more fruitful than the former cantonal excise. The machinery of administration is much simplified, and nearly double the amount is rendered for the cost of collection.¹

When we inquire into the moral and social results there is at present less that is tangible to be observed. The expectations of the promoters of the scheme were that the evils of drunkenness would be reduced both by decreasing consumption and by providing drink of purer quality. The latter object is obtained by government inspection, not only of the monopoly distilleries, but also of the smaller establishments manufacturing the free products.²

In the matter of consumption a decided decrease would seem to have been brought about in a few years. In 1885, before the introduction of the monopoly, the total demand was for about 150,000 hectoliters of distilled liquors for drinking pur-

¹ In the report of the Bundesrath for 1896 (*Bundesblatt*, 1896, III., 803) is a comparative statement of the cost of collection. During the years 1891-95 the average annual cost of the federal administration of alcohol was 382,214 francs and the average profits 5,376,801 francs.

Under the old system the average cost to the cantons for collecting all taxes upon spirits between 1880 to 1884 was 307,180 per annum, while the average amount realized was 3,580,880 francs.

² Fed. Laws.

FEDERAL FINANCE

poses, while in 1889 the amount sold under control of the federal government was 67,242 hectoliters. The latter figures, of course, do not include the exempted fruit spirits. As a result of ten years' operation of the monopoly, it was estimated in 1895 that the demand for spirits had decreased about 30 per cent. But it would not be safe to say that the country had become temperate to this extent, for there is strong reason to believe that part of the reduced alcohol intended for the arts is either purified again and used for drinking or consumed outright in its mixed state.¹ Something will have to be done to render purification impossible before trustworthy statistics can be given as to decrease of drunkenness. The administration has also suggested that the price of spirits be raised so that people will be driven to use less expensive and less harmful drinks.

The tenth part of this revenue which is to be used for the suppression of the evil of intemperance will continue to be applied in various ways in the different cantons. Strictly speaking this is a matter of cantonal finance, but since it is of universal application we may consider it here in connection with federal affairs. The annual profits now having exceeded six millions of francs, there will be six hundred thousand to devote to ameliorating the evil. Of this, some of the cantons devote part of their quota for distinct inebriate asylums. Part goes to support workhouses, reformatories,

¹ Bericht d. Bundesrath, 1888.

GOVERNMENT IN SWITZERLAND

and institutions for the insane or epileptic, and part even for the deaf, dumb, and blind. ,

Others attack the causes of intemperance by trying to improve the food of the people, by providing meals for the poorer school children, as well as vacation colonies and fresh air outings. Some contribute to the support of poor travellers, while one canton turns all its quota into the poor fund at large. In an interesting statistical view of the use of the alcohol tithe, prepared by the Federal Bureau, the objects of expenditure are classified into groups which are directed (1) toward alleviation of effects, (2) against causes, and (3) against both at the same time. To relieve effects of intemperance through hospitals and asylums there is devoted about 31 per cent of the whole; against causes about 23 per cent; and measures which combine both of these objects, such as the care of defective and incorrigible children, or youthful criminals, obtain about 39 per cent. A portion may be laid aside to accumulate for a worthy object, but no canton is permitted to fund the whole of its quota.

The use of intoxicating beverages will by no means be brought under control so long as the distillation of low grades of fruit spirits and the manufacture of malt drinks is under no restriction. No one can tell whether the apparent decrease in the consumption is not merely a diversion of appetite to apple-jack and absinthe, or perhaps to increased use of beer and wine. The sociological side of the

FEDERAL FINANCE

question needs a longer time to work out a solution. The financial prospects will be favorable so long as nine-tenths of the income are set apart to pay taxes and one-tenth to making war on intemperance by means of asylums and summer excursions.

To recapitulate briefly the financial operations of the central government, it may be observed that the total revenues from all sources are now about one hundred millions of francs. To this amount the customs duties contribute very nearly half, followed at a long distance by the net profits of the post-office department and by the military exemption tax, each of which yields about a million and a half. This latter is the easiest of all the revenues to obtain, since all expenses of levy and collection are assumed by the cantons and the gross receipts equally divided with the federal government. However, for the amount involved, the customs duties are very economically administered, the expense of that department amounting to about 10 per cent of the gross receipts. The largest item of expense is the army, consuming more than one-fourth of the revenue. Although carrying on no wars of its own, nor joining in the conquests of other countries, Switzerland is compelled to undergo this great expense in order to preserve her neutrality and the integrity of her borders.

The Department of the Interior has been widening its scope, and within ten years the cost of maintaining it has more than doubled. For all matters

GOVERNMENT IN SWITZERLAND

coming within its sphere — public works, education, statistics, and the like — the estimated expenditure for 1899 was over twelve millions of francs. The proportion to other government expenses remains, however, about the same. Law-making, or the cost of maintaining the two houses of the legislature, amounts to about fifty-five thousand dollars a year, as compared with the four and a half millions or more spent by the United States. Education, as noted in another place, being left largely to the cantons, does not occupy a large portion of the federal budget.

The public debt of the country, although not a serious weight upon the prosperity of the state, is still a matter which occupies the attention of its financiers and political economists. In 1849 the federal debt was about 5,865,000 francs, and was reduced in a few years to little more than 1,200,000, but the public improvements which have been going on, especially since 1867, have brought the outstanding liabilities far away from those modest proportions. The nationalization of the railways will pile up the public debt still higher, but this will be offset by the ownership of such a valuable asset.

Considering the thriving industrial condition of Switzerland, the amount of these obligations is not very great. It is decidedly overshadowed by the debts of larger states like Russia or the United States. Even when the small size of the country, with but three millions of population, is

FEDERAL FINANCE

considered, the burden is small, amounting only to about fifteen francs per inhabitant, and this is carried at low rates of interest.¹

¹ Comparisons of income, expenditure, and debt may be made by consulting from year to year the "Statesman's Year Book," or the "Almanach de Gotha." The purchase of the railways will increase the national debt by 725,000,000 francs, but the investment will be immediately productive. See p. 264.

CHAPTER XX

THE CONFEDERATION AND SOCIETY

It will be seen from the second article of the constitution, that the central government at the outset was not only provided with the ordinary powers of police, to enable it to protect the country from danger without and to keep peace within, but upon it was also laid the task of promoting the common welfare. To the cantons were left those social relations purely connected with locality; yet there remained a large body of affairs, now local, now general in their nature, which it was eminently desirable should be uniformly administered, or, as in the case of public works, should be undertaken by the whole people.

Hence one of the first matters to demand the attention of the framers of the constitution of 1848 was, very naturally, the establishment of free trade among the states. The endless vexations arising at the boundaries of every little state, the transportation privileges, the taxes on change of residence, which prevailed so long under the old régime, were as much as possible put aside by the first constitution, and still more by that of 1874. All import and export duties are now collected at the federal frontiers, and commercial freedom,

THE CONFEDERATION AND SOCIETY

except in a few matters, is guaranteed throughout the whole country.¹

The exceptions to the free movement of goods are connected either with the financial or the sanitary operations of government. The monopoly of the sale of salt is retained by the cantons, in some cases as a source of revenue, in others as a public utility. The manufacture of gunpowder is a monopoly of the confederation, maintained as a part of its military system. As we have just seen, the manufacture of alcohol and spirituous liquors has also been assumed by the federal government, in an attempt to mitigate the evils of the traffic, and still other measures may be taken which may limit the freedom of commerce when epidemic diseases threaten, as has been notably the case with cattle plagues and the phylloxera.

The federal authorities may make regulations respecting the exercise of any class of industrial or commercial enterprise, but must not violate the principle of commercial freedom.² In exercise of this right, laws have been passed which regulate the manufacture and sale of matches,³ the guaranty of fineness in the manufacture of gold and silver wares,⁴ and the traffic in gold and silver waste products.⁵ All of these are intended to obtain safety and uniformity for all concerned.

Federal factory laws for the control and regula-

¹ Fed. Const., Art. 28, Art. 31.

⁴ Ibid., X., 45, Wolf, 305.

² Ibid., Art. 31e.

⁵ Ibid., IX., 266, Wolf, 317.

³ "Amtliche Smlg.," N. F., VI., 499, Wolf, 298.

GOVERNMENT IN SWITZERLAND

tion of the sanitary condition of workshops, the employment of children, and for the establishment of responsibility for accidents to employees, have been in force since 1877.¹ One system of inspection for the whole country is thus secured. Also within the sphere of federal legislation and supervision are agencies for foreign emigration and private insurance companies, although where insurance is undertaken by cantonal governments the confederation has no right to interfere. Patents for inventions, copyrights for books and works of art, and trade-marks for articles of commerce are issued also by the central government.

The efforts to establish uniform commercial laws for the whole of Switzerland have been much hindered by sectional opposition, but have finally been able to attain a reasonably satisfactory condition. One of the best results of the work of unification is the Federal Law of Contracts (*Obligationenrecht*) passed in 1881,² which is in itself an exhaustive treatise on the subject of commercial law, and defines all classes of agreements and liabilities to be observed throughout the confederation. Finally, in April, 1889, a general bankruptcy law was passed, which regulates the collection of debts³ according to a uniform system.

¹ Fed. Const., Art. 34, "Amtliche Smlg.," N. F., III., 241, Wolf, 288.

² "Amtliche Smlg.," N. F., V., 635, Wolf, 173.

³ Comments by A. Zeerleder, "Das Bundesgesetz über Schuldbetreibung und Konkurs." Bern, 1889. Eug. Borel. Same title, in French, Neuchâtel, 1889.

THE CONFEDERATION AND SOCIETY

One industry has been entirely forbidden. Gambling houses are the subject of constitutional enactment, and their establishment is prohibited. The large gaming tables which formerly flourished so abundantly at summer resorts were given to the first of January, 1878, to close their doors, and have since been under the ban of law.¹ Lotteries may also be made the subject of federal legislation, and have received attention in the law of contracts so far as to establish that no liability can grow out of lottery dealings unless the lottery has been permitted by competent authority.²

The management of telegraph and post office, including the parcels post, is in the exclusive control of the confederation.³ To an outside observer the national mail service has become so much a matter of course that he can hardly realize that one of the greatest steps in advance over the old system was taken only fifty years ago. Formerly each state managed the postal arrangements in its own territory, and such meagre unity as existed was obtained only by loose agreements between adjacent cantons. Then each state was more mindful of the financial than of the social aspects of the question, and a comprehensive and regular system was impossible. As compared with surrounding nations, Switzerland presented a piti-

¹ Fed. Const., Art. 35.

² Oblig. R., 514, 515.

³ Except that railways have the right to maintain telegraph lines along their roads for their own service.

GOVERNMENT IN SWITZERLAND

able aspect of disjointedness. Efforts had been made as early as the projected constitutional revision of 1832 to place the postal service under federal control, but these did not succeed until 1848. The states thus obliged to give up their rights were satisfied with indemnities which were to amount to nearly one and a half millions of francs a year.¹ In assuming the monopoly, a thread connecting this century with the middle ages was severed by the purchase of the transportation rights of the German Counts of Thun and Taxis, which were still in force in Schaffhausen. The indemnities to the cantons were finally settled at the revision in 1874, according to which, exclusive control and benefit of income were given to the confederation in return for certain changes in the military taxes.²

The postal service undertakes the transmission of letters, printed matter, parcels, money orders, and, over certain stage routes, the transportation of passengers. This department performs a distinctly social service in carrying post-free all communications of the federal government, the cantonal governments, and the local authorities, in addition to all correspondence of the poor authorities and mail matter for militiamen while in active service. The postal administration is very carefully conducted and rapid and safe communication with all parts of the country is obtained.³ The financial

¹ Blumer, I., 553.

² Protocol, Bundesrevision, p. 281.

³ Postal laws are found in special handbooks issued by the department, and in Wolf, p. 501, etc.

THE CONFEDERATION AND SOCIETY

aspects of this department, as pointed out in another place,¹ are not the chief considerations.

The monopoly of telegraphs was established first by a federal law in 1851. At the time of the adoption of the constitution of 1848 this means of communication was not sufficiently developed to gain recognition, but took its place naturally in the revision of 1874. The confederation has the right to erect lines either above or below ground through any state, but always after consultation with the cantonal or communal authorities through whose territories it is proposed to pass.² The operators and clerks are federal appointees, as in the Postal Department, and subject to all the laws governing such servants of the state.³

Laws regulating railways proceed only from the confederation.⁴ The government did not undertake at the outset to manage railways on its own account, though by the terms of certain concessions some short lines were placed at its disposal. The question as to whether the confederation should buy out all the existing roads was often

¹ See Federal Finance, p. 240.

² "Amtliche Smlg.," VII., 329, Wolf, 564, 565.

³ A uniform tariff is established for telegrams between all parts of Switzerland. For the sending of a message between any two stations, and its delivery within a radius of one kilometer from the receiving station, the charge is as follows: (1) A fixed payment of 30 centimes (*Grundtaxe*); (2) for each word, including the address, 2½ centimes. So that the charge for a telegram of ten words with eight words in the address would be $30 + 25 + 20 = 75$ centimes, or 15 cents.

⁴ Fed. Const., Art. 26.

GOVERNMENT IN SWITZERLAND

brought forward from the very beginning of the confederation, but was as often deferred. A most important step in this direction was taken during the year 1890, by the purchase of a large share of the preferred stock of the Jura-Simplon railway, one of the largest systems in Switzerland. This did not necessarily mean immediate federal management of the line, like the administration of posts and telegraphs, but the purchase made the government the controlling stockholder and financial manager. With this important railway in hand, it has not been so difficult to take further steps toward federal ownership.¹

In the meanwhile, the confederation has established very minute laws as to the construction and conduct of such enterprises, and maintains a close supervision over their administration. Regulations for the technique of railway building extend to such details as the width of track, strength of axles, height of buffers, and even to the lettering of cars, so that uniformity and safety are provided for as much as is possible without public ownership.²

¹ The conditions of the purchase will be found in "Bundesblatt," July 12, 1890, Vol. III., p. 967. An interesting sketch of federal railway politics since 1852 is in Hilty, "Polit. Jahrbuch," 1890, p. 959, etc.

² By a law passed June 27, 1890, railway and steamboat employees enjoy federal protection similar to that given to other industries by the Factory Law. The hours of labor are limited to twelve, with an unbroken period of rest for at least eight hours a day. Employees must have fifty-two free days each year, and at least seventeen of these must occur on Sunday. Freight traffic is forbidden on Sundays except for stock and perishable goods.

THE CONFEDERATION AND SOCIETY

One of the most useful spheres of governmental action lies in the regulation of the financial management of these undertakings. Federal law prescribes the method of keeping accounts which railways must follow ; what items shall be considered expense and how classified ; what shall be credited to profit and loss ; what shall be considered capital, and what shall be charged to improvements and new service ; and, further, the methods by which stock shall be transferred, indebtedness incurred, and liquidation carried out. The companies must balance their accounts at the close of every calendar year, and before the last day of the next April must lay printed copies of their reports before the Federal Council. These reports are inspected by the Department of Posts and Railways, control being thus maintained over the management, in the same way that national banks are controlled in the United States.

The value of these regulations is obvious. They give protection, not only to the state against operations prejudicial to its welfare, but the interests of the stockholder and bondholder are served in a high degree by the publicity of accounts. While gambling in railway stocks cannot thus be done away with, yet manipulation of funds, the improper "hypothecation" of bonds, and much contract jugglery can be headed off completely. The statistics of railway management, such as the United States government is endeavoring anxiously to obtain by persuasion, and with only partial success,

GOVERNMENT IN SWITZERLAND

are in Switzerland brought to light every year by federal statute, for the benefit of all concerned. Without actually managing the railways itself, the government has really brought about an efficient central control.

This control will be still more effectual when the law of 1898 takes effect in 1903. By that statute, which was ratified by popular vote, the federal government is authorized to buy up the whole railway system of Switzerland. This can be controlled by the purchase of the five great lines. The cost of the measure is already fixed by the charters of the roads, and is the net income multiplied by twenty-five. The income is to be measured by the average earnings of the last ten years. The Swiss were not so forehanded as some of the neighboring nations, which receive their railways for nothing after a certain time, but they must now buy what a former generation gave away. The investment is a matter of about 725,000,000 francs, but the lines are in excellent paying order, and the prospective income greater than the interest on the loan. The law requires that the prosperity of the roads shall be used as soon as possible to reduce the cost of travel and transportation.

By this step Switzerland enters upon a phase in its career which may be full of weighty results. The powers of the central government will be greatly enlarged. A vast army of employees will be added to the government service, and the question at once arises, What effect will this have on

THE CONFEDERATION AND SOCIETY

republican manners and political practice? How much of a bureaucracy this act will create, or how far democratic simplicity will retire into the recesses of the Alps, are parts of the problem which citizen and government alike must consider. If the state is to take possession, however, there can be no doubt that now is the time, not later, when the cost will be greater.

Since 1848 the coinage of money has been the exclusive prerogative of the confederation. The confusion of currency which was endured in the American colonies and confederation is not to be compared to the distracting disorder which prevailed in the monetary arrangements of Switzerland previously to this time. There were as many coinages as cantons, and almost as many different systems and bases of value. From so many sources it was impossible to regulate the issue according to the necessities of trade, even if this could endure the endless calculations of exchange. Efforts were made to bring about reform, but these fell with the projected constitutions of the thirties. Under the new confederation the matter was simply turned over to the federal authorities, and they, after careful consideration, adopted for uniform currency throughout Switzerland the coinage system of France, which had already gained a partial foothold. The unit of calculation is the franc, divided into 100 centimes (German *Rappen*) and coined in various multiples. By the treaty of 1865, Switzerland entered into the Latin Monetary Union, so that now her

GOVERNMENT IN SWITZERLAND

coinage is on a uniform basis not only with that of France, but also of Belgium, Italy, and Greece.¹

"The establishment of weights and measures belongs to the confederation. The administration of the laws on the subject is carried out by the cantons, under the supervision of the confederation."² This order of things was brought about finally in 1874. The cantons had already, before the establishment of the confederation, endeavored to help themselves toward uniformity by means of a concordat, and were prepared for the provision of the constitution of 1848 which granted the federal government the right to establish a general system on the basis of the existing agreement. But resistance was encountered in the Romance cantons, which was not wholly removed till the matter was put into the hands of the central government without reserve. Then the metric system was adopted, and finally made obligatory.

As a matter of general interest to the whole people, the confederation superintends the maintenance of such highways and bridges as contribute to the welfare of the union. The care of roads is, in reality, the duty of the individual states, but by keeping an oversight upon interstate and international thoroughfares of communication a greater certainty of good highways is obtained. Works of a larger nature, wherever needed, are also supported in part by federal subventions. Four of the moun-

¹ "International Mon. Conf.," 1878. Appendix, p. 779, etc.

² Fed. Const., Art. 40.

THE CONFEDERATION AND SOCIETY

tain cantons receive regular annual subsidies for maintaining the Alpine passes within their territories,¹ and such undertakings as the Gotthard and Simplon tunnels have been heavily supported. The confederation is able to discipline these subsidized cantons, in case they do not properly maintain their roads, by withholding the sums allowed them.²

In general it may be said that the confederation is expected to assist in the construction of public works which exceed the powers of single states. The improvements of rivers, protection against avalanches, and other matters of like nature have had the support of the federal legislature. In order to carry out such projects the confederation may exercise for itself the right of eminent domain, and in case an undertaking on the part of a canton threatens injury to the military interests of the country, may forbid its construction.³

Supervision of the general welfare of the country extends also over forestry and dikes. This is particularly important in the high Alps, where great precautions must be taken against torrents and snow. The constitution originally limited the government superintendence to the upper mountain region, but by an amendment adopted in 1897 the whole matter is placed under central control.⁴

¹ Fed. Const., Art. 30. Uri, 80,000 francs ; Graubünden, 200,000 ; Tessin, 200,000 ; Wallis, 50,000.

² Fed. Const., Art. 37.

³ Ibid., Art. 23.

⁴ Art. 24.

GOVERNMENT IN SWITZERLAND

Fishing and hunting and the protection of useful birds may also be made the subject of general laws, although the right to hunt and fish is, as stated elsewhere,¹ usually regulated by cantons or communities.

THE CONFEDERATION AND EDUCATION

In the matter of education, the statistics of what is done by the central government do not exhibit to advantage what is accomplished by the Swiss people as a whole. Schools and universities are nearly all maintained by the cantons, and their educational work is treated more fully under the head of Cantonal Government; yet the confederation contributes a large amount to the advancement of learning and supplements in many ways the efforts of the states.

The constitution of 1848 authorized the federal government to erect and maintain a polytechnic school and a university.² The first was founded in 1855, but the university has never been realized. The plan has been frequently brought forward, but always meets opposition from representatives of the cantons where universities already exist. It does, in fact, seem unnecessary to add to the number of institutions, yet a federal school of law is a great desideratum. The national bar association regularly recommends this in order that there may be one place where a total view may be obtained

¹ See Cantonal Finance.

² Art. 22.

THE CONFEDERATION AND SOCIETY.

of the complicated cantonal laws and practice. The *Rechtsschule*, however, has not yet materialized. The revision of 1874 went further than its predecessor in its provisions for education, by declaring that in addition to the existing *Polytechnicum*, the confederation was authorized to establish a university and other institutions of higher education, or to aid such institutions.¹ Furthermore, the obligation was laid upon the cantons to maintain primary education, which throughout the whole country must be compulsory, free of cost, open to children of all religious beliefs, and under the supervision of the state. If any canton does not fulfil these obligations, the federal government may take the necessary steps to compel it to do so.

The interpretation and application of the clauses respecting primary education have been delicate tasks for the federal authorities, and perhaps await yet more satisfactory solution. Many of the cantons need no urging in the direction of either popular or higher education, supporting liberally universities, colleges, seminaries, and carefully conducted public school systems, there being, besides the federal *Polytechnicum*, six universities with over three hundred instructors within this small territory of about three millions of inhabitants.

The confederation itself expended in 1896 upon the Polytechnic 800,000 francs.² It contributed

¹ Fed. Const., Art. 27.

² Grob, "Jahrbuch des Unterrichtswesen in der Schweiz."

GOVERNMENT IN SWITZERLAND

further to the support of over one hundred technical and industrial schools and museums in the various states, and gave considerable subsidies for agricultural education and experiment. It also takes an interest in the preservation of national historical relics,¹ and promotes the cause of Swiss fine arts with an annual appropriation of 100,000 francs.² The government has been engaged for a long time in the publication of the historical documents of the old confederation. Investigators under the supervision of the Federal Archivist are continually at work in foreign archives.³ A national library has been recently created with the intention of gathering together everything pertaining to Switzerland. The Bureau of Statistics is one of the most efficient of its kind.

The activity of the central government in the education of army recruits should be mentioned here. Military instruction is entirely in the hands of the confederation, and includes much besides the technicalities of drills.⁴ By its examinations the state of primary education in the various cantons is exhibited, and by the publication of the statistics an honorable rivalry in this field is encouraged. The states have not allowed much interference with their educational systems, but

¹ Law of June 30, 1886. In 1889 a National Museum was established. Hilty, "Polit. Jahrb.," 1890, p. 1011.

² Law of December, 1887. Grob, "Unterrichtswesen, Anhang," p. 1.

³ See Bibliography at end of this volume.

⁴ See "Military System," above.

THE CONFEDERATION AND SOCIETY

this general superintendence on the part of the confederation has exerted a favorable influence in the direction of uniformity and excellence.

The latest addition to the social functions of the confederation is the power to enforce general and compulsory invalid and accident insurance. By an almost unanimous vote of the national legislature, a constitutional amendment to this effect was passed in June and submitted to popular vote in October, 1890. The article¹ reads as follows: "The confederation will by statute establish invalid and accident insurance, having regard to already existing invalid funds. It may declare participation to be obligatory upon all or upon special classes of inhabitants."

It yet remains to be seen what kind of legislation will be erected upon this basis. There seems to be a strong demand for something of the kind just at present, and doubtless whatever is enacted will have the support of public opinion. The subject connects itself on one side with existing factory legislation, as better protection for the industrial classes, and in another sense, is a part of the problem of poor relief. The parliamentary committee in their report took a conservative view of the matter, and endeavored to forestall the rose-colored anticipations of radical advocates of such measures. They expected this movement to be only a single step in advance, and to express their

¹ Fed. Const., Art. 34*bis*. The article was adopted by a vote of 283,228 against 92,200. "Bundesblatt," 1890, p. 1128.

GOVERNMENT IN SWITZERLAND

moderation dropped the designation "labor insurance," so commonly used by agitators, and called the project simply invalid and accident insurance. Doubtless the benefits will be confined chiefly to the laboring classes, but it was not intended as a universal panacea for labor troubles.

THE CONFEDERATION AND RELIGION

The relations of the central government to religion and worship take the form of general guarantees rather than particular administration, and for the most part the subject might be logically treated in the chapter on individual rights. The cantons have retained the regulation of church societies, and the local machinery of religious expression. The confederation upholds the great principles upon which all are founded. Against violation of these the citizen may appeal to the federal constitution, and may invoke the powers of the federal government in his behalf. The central government, in the first place, keeps guard over the cantonal constitutions so that nothing prejudicial to liberty may creep in. Second, it acts as a court of appeal over supposed infractions of the principles of religious freedom.

In brief, these general principles are as follows:¹ Freedom of conscience and of belief is inviolable; persecution, either on the part of the state or of

¹ Fed. Const., Art. 49-53.

THE CONFEDERATION AND SOCIETY

other religious sectarians, cannot be suffered; nor may any person be compelled to join any religious society, or to participate in any religious instruction or worship without his own consent. This principle is also involved in the provision mentioned above, which declares that the public schools shall everywhere be so conducted that members of all confessions may attend without injury to their religious feelings or violation of their consciences. In order to settle any controversies which might arise between parents of different confessions, the constitution provides that the religious education of children up to the end of the sixteenth year shall be determined by the father, or the possessor of the paternal authority.¹

The exercise of civil or political rights cannot be abridged by regulations or conditions of an ecclesiastical or religious nature. In other words, a man may not be deprived of any of his civil rights because he does or does not belong to this or that denomination. Switzerland was slow in coming to this point. Even by the constitution of 1848, only the Christian religion was recognized. Israelites and others had no guarantee whatever except what public opinion could furnish, but in 1874 all distinctions were laid aside.

But if religious opinion cannot deprive a citizen of his rights, so neither can the state be deprived of his services on account of his private opinions.

¹ "Inhaber der väterlichen oder vormundschaftlichen Gewalt."

GOVERNMENT IN SWITZERLAND

Sectarians who refuse to carry arms may be compelled to do so.¹

No one shall be required to pay taxes which are levied especially for the purely religious purposes of any society to which he does not belong. The presence of an established religion in many of the cantons makes the interpretation of this clause, and especially the formulation of a federal statute on the subject, quite difficult.

The Federal Council and the Federal Court have, however, spoken to the effect that no one can refuse to pay the general cantonal or general community taxes, out of which in so many states the church is supported.² The tax to be illegal must be for the exclusive use of a particular cult. Levies voted for matters which serve both religious and civil purposes, as bells, tower clocks, or grounds for cemeteries, would not be considered special religious taxation.

The freedom to exercise religious worship, within the bounds of good morals and public order, is guaranteed. Any attempts on the part of different sects to interfere with each other, or of ecclesiastical authorities to usurp the functions of the civil government, would be checked by the cantons as well as by the confederation. Appeal in any

¹ Langhard, "Glaubens- und Kultusfreiheit," p. 121. Yet when such cases come up among recruits, officers have been known to compromise with conscientious non-combatants, by placing them in the hospital service, or similar auxiliary capacity.

² Langhard, p. 73.

THE CONFEDERATION AND SOCIETY

such cases might be had to the federal authorities, with whom lies the guaranty of equality.¹

The establishment of bishoprics within Swiss territory may be effected only with the consent of the confederation. This is aimed at the prevention of divided allegiance, which would arise where a bishopric included territory of foreign governments. Considerable trouble has been experienced with the Roman Catholic Church on this account. In early times their dioceses paid no attention to national boundaries, and when it became necessary to reorganize these divisions, no little dispute arose, and has not yet been fully settled.

The order of the Jesuits, and societies associated with it, are forbidden to locate anywhere in the country, and their activity in church or school is entirely prohibited. The establishment of new monasteries, or the reopening of any suppressed cloister, is also forbidden. The downfall of the Jesuits in Switzerland was caused by their incessant interference in affairs of state, and the intense

¹ The opposition experienced by the Salvation Army for a time called in question the religious liberty supposed to exist in Switzerland. The restrictions placed upon the public performances of these missionaries came from the state authorities and were at times severe, but were established in the interest of peace rather than on account of religious intolerance. The federal government also for a short time interfered, but afterward withdrew its orders, and in 1890 refused to adopt prohibitive measures which were urged upon it. The appearance of the Salvation Army does not now awaken the former opposition on the part of the people, and measures to prevent riots can be safely left to the state governments.

GOVERNMENT IN SWITZERLAND

ultramontane character of their policy. It was chiefly their agitation that brought about the conflict of religions which resulted in the secession of the *Sonderbund*, and very nearly the downfall of the republic. It was determined that in future this particular activity should be excluded, since without the agitators the people would soon learn to accommodate themselves to each other's religious views.

Finally, in some minor points in which ecclesiastics might possibly exert undue influence, the civil authorities have been given by the constitution a control which in former times they did not have. The registry of births, deaths, marriages, and civil status was placed entirely in the hands of public officials, and to prevent misunderstandings between the church and the unfaithful, it is laid upon civil authorities to see that every deceased person shall be decently buried.¹

¹ Fed. Const., Art. 53.

CHAPTER XXI

THE CONFEDERATION AND THE INDIVIDUAL

HAVING indicated in outline the organic structure of the federal government, its place in the complex life of the confederation, and its relations to the social fabric, it will be in order to point out briefly the individual rights which are especially under its protection.

In making up the sum of personal privileges which are enabled to be enjoyed, it will also be necessary to keep in mind all the social conditions which form the citizen's environment, and to remember that all the governmental activities mentioned in the previous chapters, which are exerted for the general welfare, are inseparable from the good of the private individual. To these may be added any particular elements which the confederation contributes directly to the safety and well-being of its members.

In respect to outward designation of these things, the Swiss government does not differ from many other enlightened states, yet the quality of the privileges may be quite apart. In the first place, there is guaranteed to every citizen equality before the law.¹ Not that every man is equal to every

¹ Fed. Const., Art. 4.

GOVERNMENT IN SWITZERLAND

other man in his rights to possessions and preferment, but, when he appeals to the law or expresses his opinion in political matters, the lowest is as good as the highest. "There shall be in Switzerland no condition of political dependence, no privileges of place, birth, family, or person."

Freedom of movement from one canton to another may not be denied to any one who can show evidence of origin, nor shall the citizen who takes up a new residence be treated differently than his new neighbors. Persons coming from one canton into another cannot be taxed more severely than old residents, nor for the support of both cantons. Foreigners look to the federal government for naturalization, though full adoption as citizens depends on the community and canton.¹ When citizenship is once obtained, no canton can banish the possessor out of its borders nor deprive him of its privileges. The confederation retains the right to order unpleasant strangers to leave the country, but a Swiss citizen cannot be outlawed by any limits of time or absence from the country, except at the request of the person himself, and the regulations for the dissolution of allegiance are established by the central power. Foreign countries are not so willing to allow the perpetuity of these obligations,² but, so far as the home government is concerned, if you are a Swiss citizen once, you are a Swiss citizen always.

¹ Fed. Const., Art. 43-48.

² For United States, see Wharton's "Int. Law Digest," 172.

CONFEDERATION AND INDIVIDUAL

The liberty of religious belief, freedom of conscience, and choice of worship, have been sufficiently outlined in another place. It must be conceded that so long as the cantons maintain established religions, or even attempt to support the ministry of all the chief sects alike, there will be limitations to religious liberty not known in the United States. But to have cut loose all at once from the old state of things would have been too violent a change in 1848, or even in 1874. So far as private belief is concerned, no limitations are set, but as to taxation for religious purposes, complete freedom is yet to be obtained.

By removing the registration of births and marriages from the hands of any but the civil authorities, a possible limitation of religious liberty was broken down, since ecclesiastical powers might forbid the marriage of persons of different beliefs. This was a source of great controversy, often of hardship, in earlier times, but now the "right of marriage stands under the protection of the confederation, and cannot be limited by any restrictions of an ecclesiastical or economic nature, nor on account of previous conduct or any other police reasons."¹ The parties may judge for themselves whether or not they will enter into this relation, and no artificial barriers can be thrown up by states or communities, either by non-recognition of foreign ceremonials, or by special taxation, bridal settlement fees, or similar demands.

¹ Fed. Const., Art. 54.

GOVERNMENT IN SWITZERLAND

To expression of opinion through the press the fullest liberty within the bounds of good morals is guaranteed.¹ Punishment for the criminal abuse of this privilege is exacted by the cantonal governments, though the laws under which this is done must be approved by the federal executive. On the other hand, the confederation has the right to punish press abuses which are directed against itself or the federal officials.² This might be made an instrument of oppression, but the criminal statute enumerates as indictable offences chiefly matters of public concern, as incitement to insurrection, or to disobey or hinder the execution of federal laws. For personal affairs, as when officials or authorities are libelled, suit against the offender is brought, not by the government, but by the official or body injured.

The right of citizens to form associations cannot be impeached so long as their objects are not unlawful or dangerous to the state. The laws on the subject of the misuse of this liberty are, however, established by the cantons.³ The right to enter complaint of grievances in form of petition to the government stands also under the protection and guaranty of the confederation.

If summoned to answer for his action in a court of law, no citizen can be made to appear before any other than the legally constituted tribunal of

¹ Fed. Const., Art. 55.

² "Bundesstrafrecht," Art. 69-72, 42, 43, 48, 59.

³ Fed. Const., Art. 56.

CONFEDERATION AND INDIVIDUAL

his place of residence. Hardship cannot be thus imposed upon a man by bringing suit in a distant place, as he can be made to appear only before the proper judges of his community or state.¹ This was one of the great principles for which the struggling confederation fought in feudal times, and first obtained in the fourteenth century.² Now the whole power of the central government may be invoked to maintain the "*jus non evocando*." Nor may extraordinary tribunals be erected for special purposes, nor shall ecclesiastical courts have any jurisdiction in civil matters.

Imprisonment for debt, and all corporal punishments, are forbidden.³ That sentence of death should not be pronounced for political offences was an original provision of the constitution of 1848, but in the revision of 1874 this article was made to abolish all capital punishment, except in time of war. A few years' trial of this, however, provoked great outcry from all sides, and in 1879 the federal legislature was compelled to submit the matter to popular vote. Subsequently an amendment was passed placing the punishment of death for crime within the option of the cantons, while the confederation guarantees that no man shall be executed for political reasons. A few cantons re-introduced capital punishment, but no use has been made of the privilege.⁴

¹ Fed. Const., Art. 58.

² Chapter I., p. 11.

³ Fed. Const., Art. 59, 65.

⁴ An eminent jurist has recently made some very just criticisms

GOVERNMENT IN SWITZERLAND

The liberties and privileges in the domain of commerce and industry have been mentioned before, and it might then have been observed that while freedom of contract and free trade between states, and, in general, unrestricted personal action are largely maintained, in reality the social operations of the confederation and the cantons, through their monopolies and industries, impose quite powerful limitations on the sphere of individual activity. These are not necessarily harmful to public welfare, but are nevertheless to be noted when estimating the extent of personal liberty.

Finally, as a crown to the whole edifice of popular rights, the confederation guarantees to all citizens, not only the liberties and privileges contained in the federal constitution, but also those included in the laws of the cantons.¹ In becoming surety to each state for the preservation of its constitution, the federal government does not thereby intend to guarantee the continuance of any existing administration; it upholds only the powers which the people have granted to the authorities, and if constitutional liberties have been infringed, will defend the rights of the citizen. In the federal Supreme Court is found a tribunal where the individual may get redress, and in the federal executive the strong arm of enforcement.

of the states which called so loudly for the death sentence, but which, since they have secured the privilege of establishing this penalty, have been commuting the punishment of criminals notoriously worthy of hanging. Hilty, "Jahrbuch," 1890.

¹ Fed. Const., Art. 5.

APPENDICES

I

THE FIRST FEDERAL CONSTITUTION OF SWITZERLAND

PERPETUAL LEAGUE OF THE FOREST CANTONS, 1291

IN the name of God. Amen. 1. Honor and public welfare are enhanced when agreements are entered into for the proper establishment of quiet and peace. Therefore, know all men, that the people of the valley of Uri, the democracy of the valley of Switz, and the community of mountaineers of the lower valley,¹ in view of the evil of the time, in order that they may better defend themselves and their own, have promised in good faith to assist each other, with aid, counsel and every favor, with person and goods, within the valleys and without, with all power and endeavor against all and every who may inflict upon any one of them any violence, molestation or injury, or may plot evil to their persons or goods. 2. And in every event, each people has promised to hasten to the aid of the other whenever necessary, and at their own expense, so far as needed, in order to resist attacks of evildoers, and to avenge injuries.

¹ Nidwalden. Obwalden, the other part of Unterwalden, entered the confederation later.

GOVERNMENT IN SWITZERLAND

To which end they have taken oath in person to do this without deceit, and to renew by means of the present [agreement] the ancient oath-confirmed confederation.¹ 3. Yet in such a manner that every man, according to his rank, shall continue to yield proper obedience to his overlord.

4. By common agreement and by unanimous consent, we promise, enact and ordain that in the aforesaid valleys we will in nowise receive or accept any judge who has obtained his office for a price, or for money in any way whatever, nor one who is not a native or resident with us.

5. If dissension shall arise between any of the confederates, prudent men of the confederation shall come together to settle the dispute between the parties as shall seem right to them, and the party which rejects their judgment shall be an enemy to the other confederates.

6. Furthermore, it is established between them that whoever maliciously kills another without provocation shall lose his life, if captured, as his nefarious crime demands, unless he can show his own innocence in the affair; and if he escapes, he shall never return. Concealers and defenders of the aforesaid malefactors shall be banished from the valleys, until they are expressly called back by the confederates.

¹ Upon this clause is based the hypothesis that a confederation existed previous to this time, perhaps as early as 1250. No earlier document, however, has been preserved, hence the charter of 1291 is called the First Perpetual League (*Der ewige Bund*).

THE FIRST FEDERAL CONSTITUTION

7. If any one of the confederates, by day, or in the silence of the night, maliciously attempts to injure another by fire, he shall never be held for a compatriot. 8. If any one protects or defends the aforesaid evildoer, he shall render satisfaction to the person injured. 9. Further, if any one of the confederates robs another of his goods, or injures him in any way, the goods of the evildoer, if found within the valleys, shall be seized in order that satisfaction may be given to the party damaged, according to justice. 10. Furthermore, no one shall seize another's goods for debt, unless he be manifestly his debtor or surety, and this shall only take place with the special permission of his judge. Moreover, every man shall obey his judge—and if necessary, himself ought to indicate the judge within [the valley] before whom he ought properly to appear. 11. And if any one rebels against a verdict, and if in consequence of this pertinacity any one of the confederates is injured, the whole body of confederates are bound to compel the contumacious party to give satisfaction.

12. If war or discord shall arise among any of the confederates, and one contending party refuses to accept proffered justice or satisfaction, the confederates are bound to assist the other party.

13. The regulations above written, established for the common utility and welfare, shall, the Lord willing, endure forever. In testimony of which, at the request of the aforesaid parties, the present instrument has been made and confirmed with

GOVERNMENT IN SWITZERLAND

the seals of the three democracies and valleys aforesaid.

Done in the year of the Lord M.CC.LXXXX. primo. at the beginning of the month of August.¹

¹ Original in the archives of Schwyz. Published in "Eidgenössische Abschiede," I., 242; Kopp, "Urkunden zur Geschichte der eidgenössischen Bünde," 32; Bluntschli, "Bundesrecht," II., 2; German translation in Oechsli, "Quellenbuch," 50.

II

FEDERAL CONSTITUTION OF THE SWISS CONFEDERATION¹ (OF MAY 29, 1874)

IN THE NAME OF ALMIGHTY GOD

THE Swiss Confederation, desiring to confirm the alliance of the confederates, to maintain and to promote the unity, strength, and honor of the Swiss nation, has adopted the federal constitution following:—

¹ "This translation of the constitution of Switzerland has been made from the parallel French and German texts by Albert Bushnell Hart, Assistant Professor of History in Harvard College. The copy or proofs of the translation have been submitted to Professors S. M. Macvane and Adolphe Cohn of Harvard College, Professor Bernard Moses of the University of California, Professor Woodrow Wilson of Wesleyan University, Professor R. Hudson of the University of Michigan, and Dr. J. M. Vincent, Librarian of the Department of History and Politics, Johns Hopkins University—from all of whom helpful suggestions have been received." Reprinted, by permission, from "Old South Leaflets," General Series, No. 18.

So many changes and amendments have been inserted since this translation was first printed, that the gentlemen above named can hardly be held responsible for the form in which it here appears.

J. M. V.

GOVERNMENT IN SWITZERLAND

CHAPTER I. GENERAL PROVISIONS

ARTICLE 1. The peoples of the twenty-two sovereign cantons of Switzerland, united by this present alliance, viz. : —

Zürich, Bern, Luzern, Uri, Schwyz, Unterwalden (Upper and Lower), Glarus, Zug, Freiburg, Solothurn, Basel (urban and rural), Schaffhausen, Appenzell (the two Rhodes), St. Gallen, Graubünden, Aargau, Thurgau, Ticino, Vaud, Valais, Neuchâtel, and Geneva, form in their entirety the Swiss Confederation.

ART. 2. The purpose of the confederation is, to secure the independence of the country against foreign nations, to maintain peace and order within, to protect the liberty and the rights of the confederates, and to foster their common welfare.

ART. 3. The cantons are sovereign, so far as their sovereignty is not limited by the federal constitution ; and, as such, they exercise all the rights which are not delegated to the federal government.

ART. 4. All Swiss are equal before the law. In Switzerland there are neither political dependents nor privileges of place, birth, persons, or families.

ART. 5. The confederation guarantees to the cantons their territory, their sovereignty, within the limits fixed by Article 3, their constitutions, the liberty and rights of the people, the constitutional rights of citizens, and the rights and powers which the people have conferred on those in authority.

FEDERAL CONSTITUTION

ART. 6. The cantons are bound to ask of the confederation the guaranty of their constitutions.

This guaranty is accorded, provided : —

(*a*) That the constitutions contain nothing contrary to the provisions of the federal constitution.

(*b*) That they assure the exercise of political rights, according to republican forms, representative or democratic.

(*c*) That they have been ratified by the people, and may be amended whenever the majority of all the citizens demand it.

ART. 7. All separate alliances and all treaties of a political character between the cantons are forbidden.

On the other hand, the cantons have the right to make conventions among themselves upon legislative, administrative, or judicial subjects; in all cases they shall bring such conventions to the attention of the federal officials, who are authorized to prevent their execution if they contain anything contrary to the confederation or to the rights of other cantons. Should such not be the case, the covenanting cantons are authorized to require the coöperation of the federal officials in carrying out the convention.

ART. 8. The confederation has the sole right of declaring war or making peace, and of concluding alliances and treaties with foreign powers, particularly treaties relating to tariffs and commerce.

ART. 9. By exception, the cantons preserve the

GOVERNMENT IN SWITZERLAND

right of concluding treaties with foreign powers respecting the administration of public property and border and police intercourse ; but such treaties shall contain nothing contrary to the confederation or to the rights of other cantons.

ART. 10. Official intercourse between cantons and foreign governments, or their representatives, shall take place through the Federal Council.

Nevertheless, the cantons may correspond directly with the inferior officials and officers of a foreign state in regard to the subjects enumerated in the preceding article.

ART. 11. No military capitulations shall be entered into.

ART. 12. Members of the departments of the federal government, civil and military officials of the confederation, and federal representatives or commissioners, are forbidden to receive from any foreign government any pension, salary, title, gift, or decoration.

Such persons, already in possession of pensions, titles, or decorations, must renounce the enjoyment of pensions and the bearing of titles and decorations during their term of office.

Nevertheless, inferior officials may be authorized by the Federal Council to continue in the receipt of pensions.

No decoration or title conferred, by a foreign government shall be borne in the federal army.

No officer, non-commissioned officer, or soldier shall accept such distinction.

FEDERAL CONSTITUTION

ART. 13. The confederation has no right to keep up a standing army.

No canton or half-canton shall, without the permission of the federal government, keep up a standing force of more than three hundred men; the mounted police [*gendarmérie*] is not included in this number.

ART. 14. In case of differences arising between cantons, the states shall abstain from violence and from arming themselves; they shall submit to the decision to be taken upon such differences by the confederation.

ART. 15. In case of sudden danger of foreign attack, the authorities of the cantons threatened shall request the aid of other members of the confederation, and shall immediately notify the federal government; the subsequent action of the latter shall not thereby be precluded. The cantons summoned are bound to give aid. The expenses shall be borne by the confederation.

ART. 16. In case of internal disturbance, or if danger is threatened by another canton, the authorities of the canton threatened shall give immediate notice to the Federal Council, in order that that body may take the measures necessary, within the limits of its power (Art. 102, §§ 3, 10, 11), or may summon the Federal Assembly. In extreme cases the authorities of the canton are authorized, while giving immediate notice to the Federal Council, to ask the aid of other cantons, which are bound to afford such aid.

GOVERNMENT IN SWITZERLAND

If the executive of the canton is unable to call for aid, the federal authority having the power may, and if the safety of Switzerland is endangered, shall intervene without requisition.

In case of federal intervention, the federal authorities shall take care that the provisions of Article 5 be observed.

The expenses shall be borne by the canton asking aid or occasioning federal intervention, except when the Federal Assembly otherwise decides on account of special circumstances.

ART. 17. In the cases mentioned in Articles 15 and 16, every canton is bound to afford undisturbed passage for the troops. The troops shall immediately be placed under federal command.

ART. 18. Every Swiss is bound to perform military service.

Soldiers who lose their lives or suffer permanent injury to their health in consequence of federal service, are entitled to aid from the confederation for themselves or their families, in case of need.

Each soldier shall receive, without expense, his first equipment, clothing, and arms. The weapon remains in the hands of the soldier, under conditions which shall be prescribed by federal legislation.

The confederation shall enact uniform provisions as to an exemption tax.

ART. 19. The federal army is composed :—

(a) Of the cantonal military corps.

FEDERAL CONSTITUTION

(b) Of all Swiss who do not belong to such military corps, but are nevertheless liable to military service.

The confederation exercises control over the army and the material of war provided by law.

In cases of danger, the confederation has also the exclusive and direct control of men not included in the federal army, and of all other military resources of the cantons.

The cantons have authority over the military forces of their territory, so far as this right is not limited by the federal constitution or laws.

ART. 20. The laws on the organization of the army are enacted by the confederation. The enforcement of military laws in the cantons is intrusted to the cantonal officials, within limits which shall be fixed by federal legislation, and under the supervision of the confederation.

Military instruction of every kind pertains to the confederation. The same applies to the arming of troops.

The furnishing and maintenance of clothing and equipment is within the power of the cantons; but the cantons shall be credited with the expenses therefor, according to a regulation to be established by federal legislation.

ART. 21. So far as military reasons do not prevent, bodies of troops shall be formed out of the soldiers of the same cantons.

The composition of these bodies of troops, the maintenance of their effective strength, the appoint-

GOVERNMENT IN SWITZERLAND

ment and promotion of officers of these bodies of troops, belong to the cantons, subject to general provisions which shall be established by the confederation.

ART. 22. On payment of a reasonable indemnity, the confederation has the right to use or acquire drill-grounds and buildings intended for military purposes, within the cantons, together with the appurtenances thereof.

The terms of the indemnity shall be settled by federal legislation.

ART. 23. The confederation may construct at its own expense, or may aid by subsidies, public works which concern Switzerland or a considerable part of the country.

For this purpose it may expropriate property, on payment of a reasonable indemnity. Further enactments upon this matter shall be made by federal legislation.

The Federal Assembly may forbid public works which endanger the military interests of the confederation.

ART. 24. The confederation has the right of superintendence over dike and forest police.¹

It may coöperate in the straightening and embankment of torrents, as well as in the afforesting of the districts in which they rise. It may prescribe the regulations necessary to assure the

¹ By an amendment adopted July 11, 1897, the words "in the upper mountain regions" were stricken out, and thus the federal surveillance was made complete.

FEDERAL CONSTITUTION

maintenance of these works and the preservation of existing forests.

ART. 25. The confederation has power to make legislative enactments for the regulation of the right of fishing and hunting, particularly with a view to the preservation of the large game in the mountains, as well as for the protection of birds useful to agriculture and forestry.

ART. 25*bis*. The killing of animals without benumbing before the drawing of blood is forbidden for every method of slaughter and for every species of animals without exception.

ART. 26. Legislation upon the construction and operation of railroads is in the province of the confederation.

ART. 27. The confederation has the right to establish, besides the existing Polytechnic School, a federal university and other institutions of higher instruction, or to subsidize institutions of such nature.

The cantons provide for primary instruction, which shall be sufficient, and shall be placed exclusively under the direction of the secular authority. It is compulsory and, in the public schools, free.

The public schools shall be such that they may be frequented by the adherents of all religious sects, without any offence to their freedom of conscience or of belief.

The confederation shall take the necessary measures against such cantons as shall not fulfil these duties.

GOVERNMENT IN SWITZERLAND

ART. 28. The customs are in the province of the confederation. It may levy export and import duties.

ART. 29. The collection of the federal customs shall be regulated according to the following principles:—

1. Duties on imports:—

(a) Materials necessary for the manufactures and agriculture of the country shall be taxed as low as possible.

(b) It shall be the same with the necessities of life.

(c) Luxuries shall be subjected to the highest duties.

Unless there are imperative reasons to the contrary, these principles shall be observed also in the conclusion of treaties of commerce with foreign powers.

2. The duties on exports shall also be as low as possible.

3. The customs legislation shall include suitable provisions for the continuance of commercial and market intercourse across the frontier.

The above provisions do not prevent the confederation from making temporary exceptional provisions, under extraordinary circumstances.

ART. 30. The proceeds of the customs belong to the confederation.

The indemnity ceases which hitherto has been paid to the cantons for the redemption of customs, for road and bridge tolls, customs duties, and other like dues.

FEDERAL CONSTITUTION

By exception, and on account of their international alpine roads, the cantons of Uri, Graubünden, Ticino, and Valais received an annual indemnity, which, considering all the circumstances, is fixed as follows :—

Uri, 80,000 francs,
Graubünden, 200,000 francs,
Ticino, 200,000 francs,
Valais, 50,000 francs.

The cantons of Uri and Ticino shall receive in addition, for clearing the snow from the Saint Gotthard road, an annual indemnity of 40,000 francs, so long as that road shall not be replaced by a railroad.

ART. 31. The freedom of trade and of industry is guaranteed throughout the whole extent of the confederation.

The following subjects are excepted :—

(a) The salt and gunpowder monopoly, the federal customs, import duties on wines and other spirituous liquors, and other taxes on consumption expressly permitted by the confederation, according to Article 32.

(b) The manufacture and sale of alcohol, under Article 32*bis*. [Amendment of Dec. 22, 1885.]

(c) Drinking places, and the retail trade in spirituous liquors; but nevertheless the cantons may by legislation subject the business of keeping drinking places, and the retail trade in spirituous liquors, to such restrictions as are required for the public welfare. [Amendment of Dec. 22, 1885.]

GOVERNMENT IN SWITZERLAND

(*d*) Measures of sanitary police against epidemics and cattle diseases.

(*e*) Provisions in regard to the exercise of trades and manufactures, in regard to taxes imposed thereon, and in regard to the police of the roads.

These provisions shall not contain anything contrary to the principle of freedom of trade and manufacture.

ART. 32. The cantons are authorized to collect the import duties on wines and other spirituous liquors, provided in Article 31 (*a*), always under the following restrictions:—

(*a*) The collection of these import duties shall in nowise impede transportation: commerce shall be obstructed as little as possible, and shall not be burdened with any other dues.

(*b*) If the articles imported for consumption are re-exported from the canton, the duties paid on importation shall be refunded, without further charges.

(*c*) Products of Swiss origin shall be less burdened than those of foreign countries.

(*d*) The existing import duties on wines and other spirituous liquors of Swiss origin shall not be increased by the cantons which already levy them. Such duties shall not be established upon such articles by cantons which do not at present collect them.

(*e*) The laws and ordinances of the cantons on the collection of import duties shall, before their going into effect, be submitted to the federal gov-

FEDERAL CONSTITUTION

ernment for approval, in order that it may, if necessary, cause the enforcement of the preceding provisions.

All the import duties now levied by the cantons, as well as the similar duties levied by the communes, shall cease, without indemnity, at the end of the year 1890.

ART. 32*bis*. [Amendment of Dec. 22, 1885.] The confederation is authorized by legislation to make regulations for the manufacture and sale of alcohol. In this legislation, those products which are intended for exportation, or which have been subjected to a process excluding them from use as a beverage, shall be subjected to no tax. Distillation of wine, fruit, and their by-products, of gentian root, juniper berries, and similar products, is not subject to federal legislation as to manufacture or tax.

After the cessation of the import duties on spirituous liquors, provided for in Article 32 of the constitution, the trade in liquors not distilled shall not be subjected by the cantons to any special taxes or to other limitations than those necessary for protection against adulterated or noxious beverages. Nevertheless, the powers of the cantons, defined in Article 31, are retained over the keeping of drinking places, and the sale at retail of quantities less than two liters.

The net proceeds resulting from taxation on the sale of alcohol belong to the cantons in which the tax is levied.

GOVERNMENT IN SWITZERLAND

The net proceeds to the confederation from the internal manufacture of alcohol, and the corresponding addition to the duty on imported alcohol, are divided among all the cantons, in proportion to the actual population as ascertained from time to time by the next preceding federal census. Out of the receipts therefrom the cantons must expend not less than one-tenth in combating drunkenness in its causes and effects.

ART. 33. The cantons may require proofs of competency from those who desire to practise a liberal profession.

Provision shall be made by federal legislation by which such persons may obtain certificates of competency, which shall be valid throughout the confederation.

ART. 34. The federation has power to enact uniform provisions as to the labor of children in factories, and as to the duration of labor fixed for adults therein, and as to the protection of workmen against the operation of unhealthy and dangerous manufactures.

The transactions of emigration agents and of organizations for insurance, not instituted by the state, are subject to federal supervision and legislation.

ART. 34*bis*. [Amendment of Oct. 26, 1890.] The confederation will by law establish invalid and accident insurance, having regard for existing invalid funds. It may declare participation obligatory for all, or for special classes of the population.

FEDERAL CONSTITUTION

ART. 35. The opening of gaming houses is forbidden. Those which now exist shall be closed Dec. 31, 1877.

The concessions which may have been granted or renewed since the beginning of the year 1871 are declared invalid.

The confederation may also take necessary measures concerning lotteries.

ART. 36. The posts and telegraphs in all Switzerland are controlled by the confederation.

The proceeds of the posts and telegraphs belong to the federal treasury.

The rates shall, for all parts of Switzerland, be fixed according to the same principle and as fairly as possible.

Inviolable secrecy of letters and telegrams is guaranteed.

ART. 37. The confederation exercises general oversight over those roads and bridges in the maintenance of which it is interested.

The sums due to the cantons mentioned in Article 30, on account of their international alpine roads, shall be retained by the federal government if such roads are not kept by them in suitable condition.

ART. 38. The confederation exercises all the exclusive rights pertaining to coinage.

It has the sole right of coining money.

It establishes the monetary system, and may enact provisions, if necessary, for the rate of exchange of foreign coins.

GOVERNMENT IN SWITZERLAND

ART. 39. The right to issue bank notes and other similar paper money belongs exclusively to the confederation.

The confederation may exercise the exclusive right to issue bank notes by means of a national bank with a special administration, or, reserving the right of repurchase may transfer this privilege to a central joint stock bank, which shall be administered with government coöperation and supervision.

It shall be the chief duty of the bank having the monopoly of bank notes to regulate the circulation of currency in the country and to facilitate monetary transactions.

At least two-thirds of the net earnings of the bank, over and above a reasonable interest, or a reasonable dividend upon its share capital and the necessary additions to its reserve funds, shall fall to the cantons.

The bank and its branches shall be subject to no taxation in the cantons.

The confederation cannot declare bank notes or other similar paper money to be legal tender, except in extremity in time of war.

Federal law will determine the headquarters of the bank, its rules and organization and the further execution of this article. [Amendment of Dec. 23, 1891.]

ART. 40. The confederation fixes the standard of weights and measures.

The cantons, under the supervision of the confederation, enforce the laws relating thereto.

FEDERAL CONSTITUTION

ART. 41. The manufacture and the sale of gunpowder throughout Switzerland pertains exclusively to the confederation.

Powders used for blasting and not suitable for shooting are not included in the monopoly.

ART. 42. The expenditures of the confederation are met as follows:—

(a) Out of the income from federal property.

(b) Out of the proceeds of the federal customs levied at the Swiss frontier.

(c) Out of the proceeds of the posts and telegraphs.

(d) Out of the proceeds of the powder monopoly.

(e) Out of half of the gross receipts from the tax on military exemptions levied by the cantons.

(f) Out of the contributions of the cantons, which shall be determined by federal legislation with special reference to their wealth and taxable resources.

ART. 43. Every citizen of a canton is a Swiss citizen.

As such he may participate, in the place where he is domiciled, in all federal elections and popular votes, after having duly proven his qualification as a voter.

No person can exercise political rights in more than one canton.

The Swiss settled as a citizen outside his native canton enjoys, in the place where he is domiciled, all the rights of the citizens of the canton, including all the rights of the communal citizen.

GOVERNMENT IN SWITZERLAND

Participation in municipal and corporate property, and the right to vote upon purely municipal affairs, are excepted from such rights, unless the canton by legislation has otherwise provided.

In cantonal and communal affairs, he gains the right to vote after a residence of three months.

Cantonal laws relating to the right of Swiss citizens to settle outside the cantons in which they were born, and to vote on communal questions, are submitted for the approval of the Federal Council.

ART. 44. No canton shall expel from its territory one of its own citizens, nor deprive him of his rights, whether acquired by birth or settlement [*origine ou cité*].

Federal legislation shall fix the conditions upon which foreigners may be naturalized, as well as those upon which a Swiss may give up his citizenship in order to obtain naturalization in a foreign country.

ART. 45. Every Swiss citizen has the right to settle anywhere in Swiss territory, on condition of submitting a certificate of origin, or a similar document.

By exception, settlement may be *refused* to or *withdrawn* from those who, in consequence of a penal conviction, are not entitled to civil rights.

In addition, settlement may be *withdrawn* from those who have been repeatedly punished for serious offences, and also from those who permanently come upon the charge of public charity, and

FEDERAL CONSTITUTION

to whom their commune or canton of origin, as the case may be, refuses sufficient succor after they have been officially asked to grant it.

In the cantons where the poor are relieved in their place of residence, the permission to settle, if it relates to citizens of the canton, may be coupled with the condition that they shall be able to work, and that they shall not, in their former domicile in the canton of origin, have permanently become a charge on public charity.

Every expulsion on account of poverty must be approved by the government of the canton of domicile, and previously announced to the government of the canton of origin.

A canton in which a Swiss establishes his domicile may not require security, nor impose any special obligations for such establishment. In like manner the communes cannot require from Swiss domiciled in their territory other contributions than those which they require from their own subjects.

A federal law shall establish the maximum fee to be paid the chancery for a permit to settle.

ART. 46. Persons settled in Switzerland are, as a rule, subjected to the jurisdiction and legislation of their domicile, in all that pertains to their personal status and property rights.

The confederation shall by law make the provisions necessary for the application of this principle and for the prevention of double taxation of a citizen.

GOVERNMENT IN SWITZERLAND

ART. 47. A federal law shall establish the distinction between settlement and temporary residence, and shall at the same time make the regulations to which Swiss temporary residents shall be subjected as to their political rights and their civil rights.

ART. 48. A federal law shall provide for the regulation of the expenses of the illness and burial of indigent persons amenable to one canton, who have fallen ill or died in another canton.

ART. 49. Freedom of conscience and belief is inviolable.

No person can be constrained to take part in a religious society, to attend religious instruction, to perform a religious rite, or to incur penalties of any kind whatever on account of religious opinion.

The person who exercises the parent's or guardian's authority has the right, conformably to the principles above stated, to regulate the religious education of children up to the age of sixteen completed years.

The exercise of civil or political rights shall not be abridged by any provisions or conditions whatever of an ecclesiastical or religious kind.

No person shall, on account of a religious belief, be released from the fulfilment of a civil duty.

No person is bound to pay taxes of which the proceeds are specifically appropriated to the actual expenses of the worship of a religious body to which he does not belong. The details of the

FEDERAL CONSTITUTION

carrying out of this principle are reserved for federal legislation.

ART. 50. The free exercise of religious worship is guaranteed within the limits compatible with public order and good morals.

The cantons and the confederation may take suitable measures for the preservation of public order and of peace between the members of different religious bodies, and also against encroachments of ecclesiastical authorities upon the rights of citizens and of the state.

Contests in public and private law, which arise out of the formation or the division of religious bodies, may be brought by appeal before the competent federal authorities.

No bishopric shall be created upon Swiss territory without the consent of the confederation.

ART. 51. The order of the Jesuits, and the societies affiliated with them, shall not be received into any part of Switzerland; and all activity in church and school is forbidden to their members.

This prohibition may be extended also, by federal ordinance, to other religious orders, the action of which is dangerous to the state or disturbs the peace between sects.

ART. 52. The foundation of new convents or religious orders, and the reestablishment of those which have been suppressed, are forbidden.

ART. 53. The civil status and the keeping of records thereof is subject to the civil authority.

GOVERNMENT IN SWITZERLAND

The confederation shall by law enact detailed provisions upon this subject.

The control of places of burial is subject to the civil authority. It shall take care that every deceased person may be decently interred.

ART. 54. The right of marriage is placed under the protection of the confederation.

No limitation upon marriage shall be based upon sectarian grounds, nor upon the poverty of either of the contractants, nor on their previous conduct, nor on any other police regulation.

A marriage contracted in a canton or in a foreign country, conformably to the law which is there in force, shall be recognized as valid throughout the confederation.

By marriage the wife acquires the citizenship of her husband.

Children born before the marriage are made legitimate by the subsequent marriage of their parents.

No tax upon admission or similar tax shall be levied upon either party to a marriage.

ART. 55. The freedom of the press is guaranteed.

Nevertheless, the cantons by law enact the measures necessary for the suppression of abuses. Such laws are submitted for the approval of the Federal Council.

The confederation may enact penalties for the suppression of press offences directed against it or its authorities.

ART. 56. Citizens have the right of forming associations, provided that there be in the purpose

FEDERAL CONSTITUTION

of such associations, or in the means which they employ, nothing unlawful or dangerous to the state. The cantons by law take the measures necessary for the suppression of abuses.

ART. 57. The right of petition is guaranteed.

ART. 58. No person shall be deprived of his constitutional judge. Therefore no extraordinary tribunal shall be established.

Ecclesiastical jurisdiction is abolished.

ART. 59. Suits for personal claims against a solvent debtor having a domicile in Switzerland, must be brought before the judge of his domicile; in consequence, his property outside the canton in which he is domiciled may not be attached in suits for personal claims.

Nevertheless, with reference to foreigners, the provisions of international treaties shall not thereby be affected.

Imprisonment for debt is abolished.

ART. 60. All the cantons are bound to treat the citizens of the other confederated states like those of their own state in legislation and in all judicial proceedings.

ART. 61. Civil judgments definitely pronounced in any canton may be executed anywhere in Switzerland.

ART. 62. The exit duty on property [*traite foraine*] is abolished in the interior of Switzerland, as well as the right of redemption [*droit de retrait*] by citizens of one canton against those of other cantons.

GOVERNMENT IN SWITZERLAND

ART. 63. The exit duty on property is abolished as respects foreign countries, provided reciprocity be observed.

ART. 64. The confederation has power to make laws :—

On legal competency.

On all legal questions relating to commerce and to transactions affecting chattels (law of commercial obligations, including commercial law and law of exchange).

The confederation also has power to legislate in all other departments of civil law.

On literary and artistic copyright.

On the protection of new patterns and forms, and of inventions which are represented in models and are capable of industrial application. [Amendment of Dec. 20, 1887.]

On the legal collection of debts and on bankruptcy.

The organization of the courts, the order of procedure and the administration of justice remain, as heretofore, subject to cantonal law. [Amendment of Nov. 13, 1898.]

ART. 64*bis*. The confederation has power to enact laws against crime.

The organization of the courts, the order of procedure and the administration of justice remain, as heretofore, subject to cantonal law.

The confederation is empowered to assist the cantons in the erection of penal and reformatory institutions and for the amelioration of criminal

FEDERAL CONSTITUTION

punishments. The confederation has also the right to participate in measures for the protection of incorrigible children.

ART. 65. No death penalty shall be pronounced for a political crime. [Amendment of June 20, 1879.]

Corporal punishment is abolished.

ART. 66. The confederation by law fixes the limits within which a Swiss citizen may be deprived of political rights.

ART. 67. The confederation by law provides for the extradition of accused persons from one canton to another; nevertheless, extradition shall not be made obligatory for political offences and offences of the press.

ART. 68. Measures are taken by federal law for the incorporation of persons without country [*Heimathlosen*], and for the prevention of new cases of that nature.

ART. 69. Legislation concerning measures of sanitary police against epidemic and cattle diseases, causing a common danger, is included in the powers of the confederation.

ART. 69*bis*. The confederation has the power to enact laws (*a*) concerning traffic in food products, (*b*) concerning traffic in other articles of use and consumption, in so far as they may be dangerous to life or health.

The execution of the said laws is undertaken by the cantons under the supervision and with the financial support of the confederation. On the

GOVERNMENT IN SWITZERLAND

other hand the regulation of imports at the frontier is the duty of the confederation. [Amendment of July 11, 1897.]

ART. 70. The confederation has power to expel from its territory foreigners who endanger the internal or external safety of Switzerland.

CHAPTER II. FEDERAL AUTHORITIES

I. FEDERAL ASSEMBLY

[*Assemblée fédérale ; Bundesversammlung*]

ART. 71. With the reservation of the rights of the people and of the cantons (Articles 89 and 121), the supreme authority of the confederation is exercised by the Federal Assembly, which consists of two sections or councils, to wit:—

(A) The National Council.

(B) The Council of States.

A. NATIONAL COUNCIL

[*Conseil National ; Nationalrath*]

ART. 72. The National Council is composed of representatives of the Swiss people, chosen in the ratio of one member for each 20,000 persons of the total population. Fractions of upwards of 10,000 persons are reckoned as 20,000.

Every canton, and in the divided cantons every half-canton, chooses at least one representative.

FEDERAL CONSTITUTION

ART. 73. The elections for the National Council are direct. They are held in federal electoral districts, which in no case shall be formed out of parts of different cantons.

ART. 74. Every Swiss who has completed twenty years of age, and who in addition is not excluded from the rights of a voter by the legislation of the canton in which he is domiciled, has the right to vote in elections and popular votes.

Nevertheless, the confederation by law may establish uniform regulations for the exercise of such right.

ART. 75. Every lay Swiss citizen who has the right to vote is eligible for membership in the National Council.

ART. 76. The National Council is chosen for three years, and entirely renewed at each general election.

ART. 77. Representatives to the Council of States, members of the Federal Council, and officials appointed by that Council, shall not at the same time be members of the National Council.

ART. 78. The National Council chooses out of its own number, for each regular or extraordinary session, a President and a Vice-President.

A member who has held the office of President during a regular session is ineligible either as President or as Vice-President at the next regular session.

The same member may not be Vice-President during two consecutive regular sessions.

GOVERNMENT IN SWITZERLAND

When the votes are equally divided the President has a casting vote; in elections he votes in the same manner as other members.

ART. 79. The members of the National Council receive a compensation out of the federal treasury.

B. COUNCIL OF STATES

[*Conseil des États; Ständerath*]

ART. 80. The Council of States consists of forty-four representatives of the cantons. Each canton appoints two representatives; in the divided cantons, each half-state chooses one.

ART. 81. The members of the National Council and those of the Federal Council may not be representatives in the Council of States.

ART. 82. The Council of States chooses out of its own number for each regular or extraordinary session a President and a Vice-President.

Neither the President nor the Vice-President can be chosen from among the representatives of the canton from which the President has been chosen for the regular session next preceding.

Representatives of the same canton cannot occupy the position of Vice-President during two consecutive regular sessions.

When the votes are equally divided the President has a casting vote; in elections he votes in the same manner as the other members.

ART. 83. Representatives in the Council of States receive a compensation from the cantons.

FEDERAL CONSTITUTION

C. POWERS OF THE FEDERAL ASSEMBLY

ART. 84. The National Council and the Council of States consider all the subjects which the present constitution places within the competence of the confederation, and which are not assigned to any other federal authority.

ART. 85. The subjects within the competence of the two Councils are particularly the following:—

1. Laws on the organization of and election of federal authorities.

2. Laws and ordinances on subjects which by the constitution are placed within the federal competence.

3. The salary and compensation of members of the federal governing bodies and of the Federal Chancery; the creation of federal offices and the determination of salaries therefor.

4. The election of the Federal Council, of the Federal Court, and of the Chancellor, and also of the commander-in-chief of the federal army.

The confederation may by law assign to the Federal Assembly other powers of election or confirmation.

5. Alliances and treaties with foreign powers, and also the approval of treaties made by the cantons between themselves or with foreign powers; nevertheless the treaties made by the cantons shall be brought before the Federal Assembly only in case the Federal Council or another canton protests.

GOVERNMENT IN SWITZERLAND

6. Measures for external safety and also for the maintenance of the independence and neutrality of Switzerland; the declaration of war and the conclusion of peace.

7. The guaranty of the constitution and of the territory of the cantons; intervention in consequence of such guaranty; measures for the internal safety of Switzerland, for the maintenance of peace and order; amnesty and pardon.

8. Measures for the preservation of the constitution, for carrying out the guaranty of the cantonal constitutions, and for fulfilling federal obligations.

9. The power of controlling the federal army.

10. The determination of the annual budget, the audit of public accounts, and federal ordinances authorizing loans.

11. The superintendence of federal administration and of federal courts.

12. Protests against the decisions of the Federal Council upon administrative conflicts. (Art. 113.)

13. Conflicts of jurisdiction between federal authorities.

14. The amendment of the federal constitution.

ART. 86. The two councils assemble annually in regular session upon a day to be fixed by the standing orders.

They are convened in extra session by the Federal Council upon the request either of one-fourth of the members of the National Council, or of five cantons.

FEDERAL CONSTITUTION

ART. 87. In either council a quorum is a majority of the total number of its members.

ART. 88. In the National Council and in the Council of States a majority of those voting is required.

ART. 89. Federal laws, enactments, and resolutions shall be passed only by the agreement of the two councils.

Federal laws shall be submitted for acceptance or rejection by the people, if the demand is made by 30,000 voters or by eight cantons. The same principle applies to federal resolutions which have a general application, and which are not of an urgent nature.

ART. 90. The confederation shall by law establish the forms and intervals to be observed in popular votes.

ART. 91. Members of either council vote without instructions.

ART. 92. Each council takes action separately. But in the case of the elections specified in Article 85, §4, of pardons, or of deciding a conflict of jurisdiction (Art. 85, §13), the two councils meet in joint session, under the direction of the President of the National Council, and a decision is made by the majority of the members of both councils present and voting.

ART. 93. Measures may originate in either council, and may be introduced by any of their members.

The cantons may by correspondence exercise the same right.

GOVERNMENT IN SWITZERLAND

ART. 94. As a rule, the sittings of the councils are public.

II. FEDERAL COUNCIL

[*Conseil fédéral; Bundesrath*]

ART. 95. The supreme direction and executive authority of the confederation is exercised by a Federal Council, composed of seven members.

ART. 96. The members of the Federal Council are chosen for three years by the councils in joint session from among all the Swiss citizens eligible to the National Council. But not more than one member of the Federal Council shall be chosen from the same canton.

The Federal Council is chosen anew after each election of the National Council.

Vacancies which occur in the course of the three years are filled at the first ensuing session of the Federal Assembly, for the remainder of the term of office.

ART. 97. The members of the Federal Council shall not, during their term of office, occupy any other office, either in the service of the confederation or in a canton, or follow any other pursuit, or exercise a profession.

ART. 98. The Federal Council is presided over by the President of the confederation. There is a Vice-President.

The President of the confederation and the Vice-President of the Federal Council are chosen for

FEDERAL CONSTITUTION

one year by the Federal Assembly from among the members of the council.

The retiring President shall not be chosen as President or Vice-President for the year ensuing.

The same member shall not hold the office of Vice-President during two consecutive years.

ART. 99. The President of the confederation and the other members of the Federal Council receive an annual salary from the federal treasury.

ART. 100. A quorum of the Federal Council consists of four members.

ART. 101. The members of the Federal Council have the right to speak but not to vote in either house of the Federal Assembly, and also the right to make motions on the subject under consideration.

ART. 102. The powers and the duties of the Federal Council, within the limits of this constitution, are particularly the following : —

1. It conducts federal affairs, conformably to the laws and resolutions of the confederation.

2. It takes care that the constitution, federal laws and ordinances, and also the provisions of federal concordats, be observed ; upon its own initiative or upon complaint, it takes measures necessary to cause these instruments to be observed, unless the consideration of redress be among the subjects which should be brought before the Federal Court, according to Article 113.

3. It takes care that the guaranty of the cantonal constitutions be observed.

GOVERNMENT IN SWITZERLAND

4. It introduces bills or resolutions into the Federal Assembly, and gives its opinion upon the proposals submitted to it by the councils or the cantons.

5. It executes the laws and resolutions of the confederation and the judgments of the Federal Court, and also the compromises or decisions in arbitration upon disputes between cantons.

6. It makes those appointments which are not assigned to the Federal Assembly, Federal Court, or other authority.

7. It examines the treaties made by cantons with each other, or with foreign powers, and approves them, if proper. (Art. 85, §5.)

8. It watches over the external interests of the confederation, particularly the maintenance of its international relations, and is, in general, intrusted with foreign relations.

9. It watches over the external safety of Switzerland, over the maintenance of independence and neutrality.

10. It watches over the internal safety of the confederation, over the maintenance of peace and order.

11. In cases of urgency, and when the Federal Assembly is not in session, the Federal Council has power to raise the necessary troops and to employ them, with the reservation that it shall immediately summon the councils if the number of troops exceeds two thousand men, or if they remain in arms more than three weeks.

FEDERAL CONSTITUTION

12. It administers the military establishment of the confederation, and all other branches of administration committed to the confederation.

13. It examines such laws and ordinances of the cantons as must be submitted for its approval; it exercises supervision over such departments of the cantonal administration as are placed under its control.

14. It administers the finances of the confederation, introduces the budget, and submits accounts of receipts and expenses.

15. It supervises the conduct of all the officials and employees of the federal administration.

16. It submits to the Federal Assembly at each regular session an account of its administration and a report of the condition of the confederation, internal as well as external, and calls attention to the measures which it deems desirable for the promotion of the general welfare.

It also makes special reports when the Federal Assembly or either council requires it.

ART. 103. The business of the Federal Council is distributed by departments among its members. This distribution has the purpose only of facilitating the examination and despatch of business; decisions emanate from the Federal Council as a single authority.

ART. 104. The Federal Council and its departments have power to call in experts on special subjects.

GOVERNMENT IN SWITZERLAND

III. FEDERAL CHANCERY

[*Chancellerie fédérale; Bundeskanzlei*]

ART. 105. A federal chancery, at the head of which is placed the chancellor of the confederation, conducts the secretary's business for the Federal Assembly and the Federal Council.

The chancellor is chosen by the Federal Assembly for the term of three years, at the same time as the Federal Council.

The chancery is under the special supervision of the Federal Council.

A federal law shall provide for the organization of the chancery.

IV. FEDERAL COURT

[*Tribunal fédéral; Bundesgericht*]

ART. 106. There shall be a federal court for the administration of justice in federal concerns.

There shall be, moreover, a jury for criminal cases. (Art. 112.)

ART. 107. The members and alternates of the federal court shall be chosen by the Federal Assembly, which shall take care that all three national languages are represented therein.

A law shall establish the organization of the federal court and of its sections, the number of judges and alternates, their term of office, and their salary.

FEDERAL CONSTITUTION

ART. 108. Any Swiss citizen eligible to the National Council may be chosen to the federal court.

The members of the Federal Assembly and of the Federal Council, and officials appointed by those authorities, shall not at the same time belong to the federal court.

The members of the federal court shall not, during their term of office, occupy any other office, either in the service of the confederation or in a canton, nor engage in any other pursuit, nor practise a profession.

ART. 109. The federal court organizes its own chancery and appoints the officials thereof.

ART. 110. The federal court has jurisdiction in civil suits :—

1. Between the confederation and the cantons.

2. Between the confederation on one part and corporations or individuals on the other part, when such corporations or individuals are plaintiffs, and when the amount involved is of a degree of importance to be determined by federal legislation.

3. Between cantons.

4. Between cantons on one part and corporations or individuals on the other part, when one of the parties demands it, and the amount involved is of a degree of importance to be determined by federal legislation.

It further has jurisdiction in suits concerning the status of persons not subjects of any government [*Heimathlosat*], and the conflicts which arise

GOVERNMENT IN SWITZERLAND

between communes of different cantons respecting the right of local citizenship. [*Droit de cité.*]

ART. 111. The federal court is bound to give judgment in other cases when both parties agree to abide by its decision, and when the amount involved is of a degree of importance to be determined by federal legislation.

ART. 112. The federal court, assisted by a jury to decide upon questions of fact, has criminal jurisdiction in : —

1. Cases of high treason against the confederation, of rebellion or violence against federal authorities.

2. Crimes and misdemeanors against the law of nations.

3. Political crimes and misdemeanors which are the cause or the result of disturbances which occasion armed federal intervention.

4. Cases against officials appointed by a federal authority, where such authority relegates them to the federal court.

ART. 113. The federal court further has jurisdiction : —

1. Over conflicts of jurisdiction between federal authorities on one part and cantonal authorities on the other part.

2. Disputes between cantons, when such disputes are upon questions of public law.

3. Complaints of violation of the constitutional rights of citizens, and complaints of individuals for the violation of concordats or treaties.

FEDERAL CONSTITUTION

Conflicts of administrative jurisdiction are reserved, and are to be settled in a manner prescribed by federal legislation.

In all the fore-mentioned cases the federal court shall apply the laws passed by the Federal Assembly, and those resolutions of the Assembly which have a general import. It shall in like manner conform to treaties which shall have been ratified by the Federal Assembly.

ART. 114. Besides the cases specified in Articles 110, 112, and 113, the confederation may by law place other matters within the jurisdiction of the federal court; in particular, it may give to that court powers intended to insure the uniform application of the laws provided for in Article 64.

V. MISCELLANEOUS PROVISIONS

ART. 115. All that relates to the location of the authorities of the confederation is a subject for federal legislation.

ART. 116. The three principal languages spoken in Switzerland, German, French, and Italian, are national languages of the confederation.

ART. 117. The officials of the confederation are responsible for their conduct in office. A federal law shall enforce this responsibility.

CHAPTER III. AMENDMENT OF THE FEDERAL CONSTITUTION

ART. 118. The federal constitution may at any time be amended, wholly or partially.

GOVERNMENT IN SWITZERLAND

ART. 119. Total revision is secured through the forms required for passing federal laws.

ART. 120. When either council of the Federal Assembly passes a resolution for amendment of the federal constitution and the other council does not agree ; or when fifty thousand Swiss voters demand amendment, the question whether the federal constitution ought to be amended is, in either case, submitted to a vote of the Swiss people, voting yes or no.

If in either case the majority of the Swiss citizens who vote pronounce in the affirmative, there shall be a new election of both councils for the purpose of preparing amendments.

ART. 121. Partial revision may be secured either through popular petition (Initiative) or by act of the federal legislature.

Popular initiative is the demand of fifty thousand Swiss voters for the enactment, abolition, or amendment of specified articles of the constitution.

When several different subjects are proposed by popular initiative for revision or for adoption in the constitution, each one of these must be demanded by a separate initiative petition.

The initiative petition may be offered either in the form of a general request or in form of a completed bill.

When the petition is offered in the form of a general request, and the Federal Chambers are in agreement with the same, it is their duty to enact a bill in accordance with the sense of the petition-

FEDERAL CONSTITUTION

ers, and to lay the same before the people and the cantons for acceptance or rejection. If the Federal Assembly is not in agreement with the petition, the question of partial revision must be subjected to a vote of the people, and in case a majority of Swiss citizens taking part in the election vote yes, the amendment must be elaborated by the Federal Assembly in the sense of the popular vote.

If the request is presented in the form of a completed bill and the Federal Assembly is in agreement therewith, the project must be submitted to the people and the cantons for acceptance or rejection. In case the Federal Assembly is not in agreement, it may prepare its own bill or move the rejection of the amendment, and may submit its own project, or motion to reject, to the vote of the people and cantons at the same time with the Initiative petition.

ART. 122. The details of procedure in cases of popular initiative and popular vote on amendment of the constitution shall be established by federal law. [Arts. 118-122 amended July 5, 1891.]

ART. 123. The amended federal constitution, or the revised portion of it, shall be in force when it has been adopted by the majority of Swiss citizens who take part in the vote thereon and by a majority of the states.

In making up a majority of the states, the vote of a half-canton is counted as half a vote.

The result of the popular vote in each canton is considered to be the vote of the state.

GOVERNMENT IN SWITZERLAND

TEMPORARY PROVISIONS

ARTICLE 1. The proceeds of the posts and customs shall be divided upon the present basis, until such time as the confederation shall take upon itself the military expenses up to this time borne by the cantons.

Federal legislation shall provide, besides, that the loss which may be occasioned to the finances of certain cantons by the sum of the charges which result from Articles 20, 30, 36 (§ 2), and 42 (*e*), shall fall upon such cantons only gradually, and shall not attain its full effect till after a transition period of some years.

Those cantons which, at the going into effect of Article 20 of the constitution, have not fulfilled the military obligations which are imposed upon them by the former constitution, or by federal laws, shall be bound to carry them out at their own expense.

ART. 2. The provisions of the federal laws and of the cantonal concordats, constitutions, or cantonal laws, which are contrary to this constitution, cease to have effect by the adoption of the constitution or the publication of the laws for which it provides.

ART. 3. The new provisions relating to the organization and jurisdiction of the Federal Court take effect only after the publication of federal laws thereon.

ART. 4. A delay of five years is allowed to can-

FEDERAL CONSTITUTION

tons for the establishment of free instruction in primary public education. (Art. 27.)

ART. 5. Those persons who practise a liberal profession, and who, before the publication of the federal law provided for in Article 33, have obtained a certificate of competence from a canton or a joint authority representing several cantons, may pursue that profession throughout the confederation.

ART. 6. [Amendment of Dec. 22, 1885.]

If a federal law for carrying out Article 32*bis* be passed before the end of 1890, the import duties levied on spirituous liquors by the cantons and communes, according to Article 32, cease on the going into effect of such law.

If, in such case, the shares of any canton or commune, out of the sums to be divided, are not sufficient to equal the average annual net proceeds of the taxes they have levied on spirituous liquors in the years 1880 to 1884 inclusive, the cantons and communes affected shall, till the end of 1890, receive the amount of the deficiency out of the amount which is to be divided among the other cantons according to population; and the remainder only shall be divided among such other cantons and communes, according to population.

The confederation shall further provide by law that for such cantons or communes as may suffer financial loss through the effect of this amendment, such loss shall not come upon them immediately in its full extent, but gradually up to the

GOVERNMENT IN SWITZERLAND

year 1895. The indemnities thereby made necessary shall be previously taken out of the net proceeds designated in Article 32*bis*, paragraph 4.

Thus resolved by the National Council to be submitted to the popular vote of the Swiss people and of the cantons.

BERN, *January 31, 1874.*

ZIEGLER, *President.*

SCHIESS, *Secretary.*

Thus resolved by the Council of States, to be submitted to the popular vote of the Swiss people and of the cantons.

BERN, *January 31, 1874.*

A. KOPP, *President.*

J. L. LUTSCHER, *Secretary.*

III

PROGRESSIVE TAXATION

A FEW points from the tax laws of various states are here given to show the variety of forms in which the progressive system is applied.

In continuation of the subject treated in Chapter IX. one may examine with profit the details of the assessment law in Graubünden.

Property Classification in Graubünden (*Steuer-gesetz*, 7. Sept. 1881, Art. 3):—

First,	Fr. 1,000 to	20,000	Simple rate (say one franc in 1000),	
Second,	20,001 "	50,000	plus $\frac{1}{10}$ for each additional 1000.	
Third,	50,001 "	80,000	"	$\frac{2}{10}$ "
Fourth,	80,001 "	110,000	"	$\frac{3}{10}$ "
Fifth,	110,001 "	140,000	"	$\frac{4}{10}$ "
Sixth,	140,001 "	170,000	"	$\frac{5}{10}$ "
Seventh,	170,001 "	200,000	"	$\frac{6}{10}$ "
Eighth,	200,001 "	230,000	"	$\frac{7}{10}$ "
Ninth,	230,001 "	260,000	"	$\frac{8}{10}$ "
Tenth,	260,001 "	290,000	"	$\frac{9}{10}$ "
Eleventh,	290,001 "	320,000 and over.	"	$\frac{10}{10}$ "

The income tax depends also on the rate fixed for the property tax. In case the latter is fixed at 1 franc in 1000, the progression for income is as follows:—

GOVERNMENT IN SWITZERLAND

Class.	Income.	Per cent.	Class.	Income.	Per cent.
1.	1 to 800	$\frac{1}{4}$	7.	5,001 to 5,500	3
2.	801 " 1,500	$\frac{1}{2}$	8.	5,501 " 6,000	$3\frac{1}{2}$
3.	1,501 " 2,000	1	9.	6,001 " 6,500	4
4.	2,001 " 3,000	$1\frac{1}{2}$	10.	6,501 " 7,000	$4\frac{1}{2}$
5.	3,001 " 4,000	2	11.	7,001 " 12,000	5
6.	4,001 " 5,000	$2\frac{1}{2}$	12.	12,001 and over	$5\frac{1}{2}$

GLARUS

As an example of a complete system of direct taxation in a rural canton the more recent law of Glarus may be cited. A brief synopsis will indicate the theory and the bases of the impost (*Landsbuch Glarus*, Bd. 2, p. 7, 1891).

The forms of taxation are three: Property Tax, Poll Tax, Inheritance Tax. (No income tax.)

What is called a Simple Property Tax is a tax of 1 franc in 1000 of real and personal property. The Simple Poll Tax is 50 centimes for every citizen above the age of twenty, except paupers.

The *Landesgemeinde*, or popular assembly, determines each year whether the property tax shall be "simple," "double" or higher, and the poll tax always follows in the same proportion. If a double property tax is voted, the poll tax is 1 franc, and so on.

Exempt from taxation: Household goods, tools, and agricultural implements; also property up to 3000 francs. Charitable institutions are not taxed,

PROGRESSIVE TAXATION

and there are partial exemptions for widows, orphans, and persons unable to work for a living. Temporary exemption may also be granted to aged invalid spinsters, to families in misfortune from sickness or disaster. Even when owning property, exemptions of 10,000 francs to 15,000 francs may be subtracted from the assessment in these latter cases.

Persons changing residence pay according to the length of time spent in the canton that year.

The assessment, or base of taxation, is in part progressive. On properties up to 25,000 francs the assessment is 60 per cent. On properties above that amount the first 25,000 francs is listed at 60 per cent of its value, as before, and the balance up to 100,000 francs at its full value. Properties of more than 100,000 francs submit to a progressive assessment as follows:—

From 100,001 to 150,000 add $\frac{1}{10}$, and for each additional 50,000 $\frac{1}{10}$ up to 400,000 francs. Between 400,000 and 1,000,000 $\frac{1}{10}$ is to be added for each additional 100,000. Above 1,000,000 add $\frac{1}{10}$ for each 250,000. Above 2,000,000 add $\frac{1}{10}$ for each 500,000. The schedule stops at 4,000,000 francs.

EXAMPLES

A property valued at par at 75,000 francs would be assessed:—

First 25,000	. . .	60 %	. . . .	15,000 francs
Balance	. . . .	par	. . . .	50,000
				65,000 francs

Tax at simple rate 1 : 1,000 = 65 francs

GOVERNMENT IN SWITZERLAND

A property having a par value of 600,000 francs would be assessed :—

First 25,000	60% . .	15,000 francs
Balance up to 100,000 . .	par . .	75,000
Balance up to 400,000 . .	par . .	300,000
Plus $\frac{1}{10}$ of each 50,000		30,000
Next 100,000 plus $\frac{1}{10}$		110,000
Last 100,000 plus $\frac{1}{10}$		110,000
		640,000 francs
Tax at simple rate 1 : 1,000 = 640 francs		

In this case the same result is reached by adding $\frac{1}{10}$ to the balance over 100,000. The longer calculation shows how to estimate properties lying between these figures.

INHERITANCE TAX IN GLARUS

This tax touches all inheritances in the canton, including wills and gifts during lifetime of donor. Exempt: clothing, household goods, tools, and agricultural implements. Exempt also: inheritances of less than 1000 francs, gifts to employees of deceased to the amount of 3000 francs, and gifts for public and charitable purposes.

For purposes of taxation, life annuities are to be capitalized at 10 years' rate of income.

Rates of taxation on inheritances vary according to nearness of relationship to the testator.

$\frac{1}{2}$ % Children, husband or wife, betrothed.

1 % Parents, grandparents and further descendants.
Grandchildren and direct descendants.

PROGRESSIVE TAXATION

- 2% Full and half brothers or sisters.
- 4% Uncle, nephew, aunt, niece.
- 6% Great uncle, etc.
- 10% All further natural heirs and all other persons not
blood relatives of the donor.

When any of the persons mentioned in the list of relatives receives more than 10,000 francs the tax is raised progressively.

10,001 to	20,000	add 1 franc for each 1,000	
20,001	"	30,000	" 2 "
30,001	"	40,000	" 3 "
40,001	"	50,000	" 4 "
50,001	"	100,000	" 5 "
100,001	"	200,000	" 6 "
200,001	"	300,000	" 7 "
300,001	"	400,000	" 8 "
400,001	"	500,000	" 9 "
500,001	and above		" 10 "

EXAMPLE

A sister inherits from her brother 100,000 francs.
She pays as inheritance tax

On 100,000 francs	.	.	2%	.	.	.	.	.	2000 francs
On the first 10,000	.	1 franc in 1000	.	.	.	.	.	.	10
" second "	.	2	"	.	.	.	.	.	20
" third "	.	3	"	.	.	.	.	.	30
" fourth "	.	4	"	.	.	.	.	.	40
On 50,000	.	.	.	.	.	.	.	.	50
									2150 francs

GOVERNMENT IN SWITZERLAND

BASEL

In Basel-City all citizens, residents, and corporations are subject to a "personal tax," which is another name for income tax, and includes all persons who earn at least 600 francs a year.

Incomes are classified and taxed a fixed sum instead of a percentage. Viz.:—

Incomes 600 to 800 pay	. . .	4 francs tax
" 800 " 1200 "	. . .	8 "

The classification varies as the incomes increase, and the tax is not as equitable as a percentage, since an income of 3100 francs pays the same as an income of 3500; 7000 the same as 10,000; 60,000 the same as 100,000. In the upper classes the tax amounts to $\frac{1}{10}$ per cent on the highest amount; *e.g.* on incomes between 30,000 francs and 40,000 francs the tax is the fixed sum of 400 francs, etc.

The property tax is also fixed in a similar way. The first 100 francs is taxed 10 centimes; so likewise for every 100 up to 20,000. From that point it advances 50 centimes for every 500, but with a slight regression, since fortunes between 20,001 and 20,500 pay 20 francs and between 20,501 and 21,000 pay 20.50, etc.

Exemptions from the property tax in Basel-City include public and charitable institutions, resident widows and wards owning less than 4000 francs; and, in general, all properties less than 500 francs.

PROGRESSIVE TAXATION

LUZERN

In Luzern there are four ways of reaching the pocket of the tax payer : —

1. The "Kataster," or the income from all real estate, both land and buildings, lying within the community where the owner resides.
2. Personal income from profession or trade.
3. Real property within the canton, regardless of the domicile of the owner.
4. Personal property.

Exemptions: Total property when it does not exceed 1000 francs or 2000 francs in a family together. Also one-fifth of the property of a person who is unable to earn a living, when the value does not exceed 6000 francs.

Progression begins in the cantonal tax when the taxable property exceeds 100,000 francs, or when the capitalized personal income exceeds 30,000 francs. Properties are classified in ten groups, advancing by steps of 100,000 francs. The tax increases by 10 centimes additional in each 1000, *e.g.* between 100,001 and 200,000 ten centimes per 1000 would be added to the regular tax paid on less than 100,000. On fortunes between 900,000 and 1,000,000 francs there would be added 90 centimes per 1000 francs.

Income taxes advance in the same way by steps of 6000 francs.

GOVERNMENT IN SWITZERLAND

SOLOTHURN

In Solothurn there is still another method of increasing taxation progressively. In the first place, there is a basis fixed, which is called a "whole tax" or "simple tax," and which may be voted in part or in multiples. This simple tax is 1 per cent on income and $\frac{1}{2}$ per cent on property.

When the tax charged to one person rises above 20 francs a progressive percentage of the tax is added. Viz. : —

To a tax of

20 to 30 francs	add 10 %	100 to 120 francs	add 60 %
30 " 40 "	" 20 %	120 " 140 "	" 70 %
40 " 60 "	" 30 %	170 " 200 "	" 90 %
60 " 80 "	" 40 %	200 "	" 100 %
80 " 100 "	" 50 %		

There is an air of simplicity about this procedure which seems to be in its favor. It will be noted, however, that it has the effect of advancing both income tax and property tax by the same rate of progress.

IV

LITERATURE OF SWISS CONSTITUTIONAL HISTORY

SELECTED REFERENCES

GENERAL HISTORIES

THE history of Switzerland has long been made a subject of inquiry by native and foreign investigators, but especially during the last century has there been most careful collection of materials and diligent research into the hidden recesses of state and federal chronicles. Another volume such as this would scarcely contain the titles of the books, monographs, and essays which have been written about Switzerland; hence it is not the intention of this article to give a complete bibliography of even the subject of constitutional history, but simply to point the way to a few of the more important and accessible sources of information.

The authority upon Swiss history, who ranked as a classic during the first half of this century, was Johann von Müller.¹ His work was not only

¹ v. Müller, Johann. "Geschichte der schweizerischen Eidgenossenschaft." Fortgesetzt von Robert Glutz-Blotzheim und J. J. Hottinger. 7 Bde.

GOVERNMENT IN SWITZERLAND

a thorough history, in the light of the knowledge of his time, but, on account of its charming literary style, was an ornament to German literature. After Müller's death the work was taken up by Robert Glutz-Blozheim and J. J. Hottinger, and continued through seven or eight volumes. They were followed by two authors from French Switzerland, Vulliemin and Monnard, who translated the work of their predecessors and carried the narrative down to the Helvetic Republic, making, in all, in some editions, a collection of sixteen volumes.¹ But since the day of these authors the state of historical science has greatly changed. New materials and new views have been coming to light and the opinions of the early classics can no longer be accepted on many important questions, particularly in respect to the origins of the confederation. A closer study of documents began to show that the popular ideas of the early condition of the Swiss and of the formation of the republic were largely mythical, and that William Tell could not be found in the records.

Among the first to set himself against overwhelming public opinion was Professor Kopp, who published, in 1835, a small collection of charters, showing the precise documentary progress of Swiss independence during the early struggle.² He after-

¹ Vulliemin, L. et Ch. Monnard. "Histoire de la Confédération Suisse." 16 Toms. 1841-47.

² Kopp, J. E. "Urkunden zur Geschichte der eidgenössischen Bünde." 1 vol. 1835.

LITERATURE

wards began a history of the confederation and occupied many years in its continuation, but in his anxiety to show the exact status of the republic, the work became in reality a history of the German empire, and, as such, is filled with an appalling mass of details, without much regard to the perspective of either German or Swiss history.¹ A clear and brief statement of the results of modern research into the subject of the struggle for independence will be found in the book of Rilliet, of which there is also a German translation.² The most fundamental work of recent years is the book of Oechsli, published by the government on the occasion of the 600th anniversary of the confederation. His results may be said to be definitive.³

If it is desired to take up the latter period of Swiss history in considerable details, one may consult the works of Tillier.⁴ He has treated in suc-

¹ Kopp, J. E. "Geschichte der eidgenössischen Bünde." 11 Bücher. Leipzig u. Berlin, 1845-82.

² Rilliet, A. "Les Origines de la Confédération Suisse." Genève, 1868.

³ Oechsli, W. "Les Origines de la Confédération Suisse." 8vo. Berne, 1891. Published simultaneously in German and French.

⁴ v. Tillier, A. "Geschichte der Helvetischen Republik," 1798-1803. 3 Bde. Bern, 1843.

—— "Geschichte der Eidgenossenschaft während der Herrschaft der Vermittlungsakte." 2 Bde. Zürich, 1845-46.

—— "Geschichte der Eidgenossenschaft," 1814-30. 3 Bde. Zürich, 1848-50.

—— "Geschichte der Eidgenossenschaft," 1830-48. 3 Bde. Bern, 1854-55.

GOVERNMENT IN SWITZERLAND

cession the period of the Helvetic Republic, the rule of Napoleon, the period of reaction 1814-30, and the period of renaissance to 1848. Better for the period of the Pact of 1815, showing the governmental notions which prevailed at the time, is a more recent volume by Van Muyden.¹

But by far the best general history for ordinary use is the recent work of Dändliker,² who has covered the entire period of Swiss history from the time of the Lake Dwellers to the year 1885. This is not only a narrative of the political and territorial growth of the country, but particular attention has also been given to constitutional advancement and to the progress of civilization in general. For each chapter there are exhaustive notes in the appendix, showing carefully the sources of information upon each period and topic. The same author has published a convenient tabular view of Swiss history.³ Another recent history, and scientifically done, so far as it has progressed, is the work of Dierauer, in which the first chapter treats of "Roman culture" in Switzerland, and the last chapter of the first volume reaches the year 1415.⁴ The short history of Arx and Strickler is good for

¹ Van Muyden, B. "La Suisse sous le Pacte de 1815." (1815 à 1830.) 1 Tom. Lausanne, Paris, 1890.

² Dändliker, K. "Geschichte der Schweiz." 3 Bde. New Ed. Zürich.

³ "Uebersichtstafeln zur Schweizergeschichte." 40 Seiten. Zürich, 1890.

⁴ Dierauer, J. "Geschichte der schweizerischen Eidgenossenschaft." 2 Bde. Gotha, 1887, etc.

LITERATURE

rapid review.¹ A brief work for English readers is that of Hug and Stead, published as one of the "Stories of the Nations."² Somewhat more extensive and presenting an excellent perspective of constitutional growth is McCrackan's "Rise of the Swiss Republic,"³ but perhaps a better short history is a more recent work by Dändliker, which has also been translated in English.⁴

Von Muralt's "Schweizergeschichte"⁵ is a brief chronological arrangement of the known facts and events, with complete citation of references as the narrative proceeds, after the manner of the German "Year Books." It is indispensable to the writer of Swiss history as far as the fourteenth century. Gisi's "Quellenbuch" gives all quotations from the ancient writers who touch upon Switzerland previous to 69 A.D.⁶ Oechsli's first "Quellenbuch"⁷ is a collection of representative documents, illustrating the political and constitutional history of the country down to modern times; translated

¹ v. Arx, F., und J. Strickler. "Illustrierte Schweizergeschichte für Schule und Haus." Zürich, 1887.

² Hug and Stead. "Switzerland." ("Story of the Nations Series.") 1 vol. D. New York, 1889.

³ W. D. McCrackan. "Rise of the Swiss Republic." 8vo. Boston, 1892.

⁴ Dändliker. "History of Switzerland." 1 vol. 8vo. Macmillan, New York and London. 1899.

⁵ v. Muralt, C. "Schweizergeschichte mit durchgängiger Quellenangabe." 1 Bd. Bern, 1885.

⁶ Gisi, W. "Quellenbuch zur Schweizergeschichte." Bd. I. 1869.

⁷ Oechsli, W. "Quellenbuch zur Schweizergeschichte." Bd. I. Zürich, 1886. Neue Folge, 1893.

GOVERNMENT IN SWITZERLAND

into German. It is intended for use in school or college work, to bring students in contact with the original sources. It includes extracts from chronicles, treaties, poets, and constitutions. A second series covers the same period, but the selections better illustrate social and economic conditions throughout the whole history of Switzerland. The two volumes are useful in the study of mediæval history in general.

Van Muyden¹ and Sutz² have been publishing popular histories in serial form. A recent history of Switzerland in the nineteenth century is due to the coöperative authorship of numerous distinguished men of letters.³ For a critical review of the historiography of Switzerland from the beginning down to 1851, one should consult the work of Georg von Wyss.⁴ All the chroniclers and historians of importance are here characterized by a master of Swiss history. The work takes rank with those of Wattenbach and Lorenz for Germany.

CONSTITUTIONAL HISTORY

There have been many histories of individual states written, and of these quite a number are

¹ Van Muyden, B. "Histoire de la Nation Suisse." 8vo. 3 vols. Lausanne.

² Sutz, J. "Schweizer Geschichte für das Volk erzählt." Large 8vo. La Chaux-de-Fonds. 1899-1900.

³ "Die Schweiz im 19. Jahrhundert." 8vo. 2 vols. Lausanne and Bern.

⁴ G. von Wyss. "Geschichte der Historiographie in der Schweiz." 8vo. Zürich, 1895.

LITERATURE

valuable to the constitutional student. Two only need be mentioned here as particularly helpful. Blumer's history of the Swiss Democracies¹ is a very careful study of the six cantons of Uri, Schwyz, Unterwalden, Glarus, Zug, and Appenzell. It exhibits the early condition of land ownership, the original legal and political jurisdictions, and the history of private and public law to the year 1798. It throws much light upon the questions in dispute at the time of the formation of the republic. Bluntschli's "Constitutional History of Zürich"² is equally good, and, like the other, of more than local interest, for it is the history of a typical development of Teutonic institutions from the early Alamannic beginnings into a modern state. Bluntschli's "Constitutional History of the Confederation"³ covers both the first and present constitutions, and is still good authority on the subject. Hilty's "Constitutional History"⁴ is later and gives the results of more modern research in better literary form. The author is both a professor of law and a practical statesman. His perspective

¹ Blumer, J. J. "Staats- und Rechtsgeschichte der schweizerischen Demokratien." 2 Bde. St. Gallen, 1850-58.

² Bluntschli, J. C. "Staats- und Rechtsgeschichte der Stadt und Landschaft Zürich." Zweite Auflage. Zürich, 1856.

³ Bluntschli, J. C. "Geschichte des schweizerischen Bundesrechts von den ersten ewigen Bünden bis auf die Gegenwart." 2 Bde. Zürich, 1849-1852. Bd. I., zweite Auflage. Stuttgart, 1875.

⁴ Hilty. "Die Bundesverfassungen der schweizerischen Eidgenossenschaft." Published simultaneously in German and French. 8vo, Berne, Neuchâtel. 1891.

GOVERNMENT IN SWITZERLAND

view of the constitutions of Switzerland, past and present, is excellent. This work was published by the government in 1891 as a companion volume to Oechsli's anniversary history. Of interest also is a collection of the early charters of the confederation with comments by J. J. von Ah.¹ For a shorter account of the whole subject the introduction to Blumer's "Constitutional Law"² is very satisfactory. The body of the work itself is an exhaustive study of the federal government, reinforced by the decisions of the higher courts. It is the best work to be had, but more convenient is Dubs' "Public Law,"³ which was written for a more popular audience. Better still, because including both federal and cantonal institutions, is the work of Orelli.⁴

Kaiser often has a crisp way of saying things somewhat in contradiction to Bluntschli and others.⁵ For historical views of the states and confederation before 1848, one may read Cherbuliez⁶

¹ J. J. von Ah. "Die Bundesbriefe der alten Eidgenossen." 1291-1513. 8vo. Einsiedeln, 1891.

² Blumer, J. J. "Handbuch des schweizerischen Bundesstaatsrechts." 2 Bde. Schaffhausen, 1863-65.

³ Dubs, J. "Das öffentliche Recht der schweizerischen Eidgenossenschaft." 2 Bde. Zürich, 1877-78.

⁴ v. Orelli, A. "Das Staatsrecht der schweizerischen Eidgenossenschaft." (Marquardsen's Handbuch des öffentlichen Rechts. Bd. 4.) Freiburg i. Br., 1885.

⁵ Kaiser, S. "Schweizerisches Staatsrecht, in drei Büchern dargestellt." St. Gallen, 1858-60.

⁶ Cherbuliez, A. "De la démocratie en Suisse." 2 vols. Genève et Paris, 1843.

LITERATURE

and Snell.¹ The latter gives texts of laws and constitutions. For the federal constitution alone, the work of Professor Moses² is more scientifically written than that of Adams and Cunningham.³ The former is interesting for its comparisons with South American republics, but the latter is perhaps more useful because of its treatment of cantonal affairs. The French translation is an improvement upon the original.⁴ Marsauche⁵ comes later into the field and contributes a useful chapter on the social problems of Switzerland. Strickler's new pamphlet⁶ gives a very succinct account of federal constitutional history. Droz' "Instruction Civique"⁷ is a manual of public law, using Swiss institutions for illustrative examples, and is valuable. Hart's "Introduction to the Study of Federal Government"⁸ devotes considerable space to Switzerland.

¹ Snell, Ludwig. "Handbuch des schweizerischen Staatsrechts." 2 Bde. Zürich, 1837-45.

² Moses, B. "The Federal Government of Switzerland." 1 vol. Oakland, Cal., 1889.

³ Adams, F. O., and C. D. Cunningham. "The Swiss Confederation." 1 vol. London, 1889.

⁴ — "La Confédération Suisse." Edition française avec notes et additions par H. G. Loumyer. 1 Tom. Bâle, Genève et Lyon, 1890.

⁵ Marsauche, L. "La Confédération Helvétique." 1 vol. Neuchâtel, 1890.

⁶ Strickler, J. "Schweizerisches Verfassungsbüchlein." 167 Seiten, Br. Bern, 1890.

⁷ Droz, Numa. "Instruction Civique." Suivi d'un Exposé des Institutions du Canton de Genève, par A. Gavard. 1 Tom. Lausanne, 1885.

⁸ Hart, A. B. "Introduction to the Study of Federal Government." (Harvard Historical Monographs.)

GOVERNMENT IN SWITZERLAND

This book is most useful as a basis for wider study, as it points the way through the subject by brief historical sketches, comparisons of constitutions, and bibliographical notes. Vincent's "Study in Swiss History" ¹ is an attempt to show the origin and continuity of the peculiar state-rights ideas of Switzerland. Valuable comparisons will be found in Bourinot, ² Freeman, ³ and May. ⁴ A recent work on Geneva may be cited as a typical constitutional history of a Romance canton. ⁵

SPECIAL QUESTIONS

For keeping in touch with the operations of Swiss institutions, the "Political Year Books" edited by Professor Hilty, of Bern, are exceedingly helpful. ⁶ They contain, beside monographs on various historical topics, annual summaries of political movements both in the confederation and the states, and are written, not in a perfunctory, but in a critical and judicial spirit. Hilty's essay

¹ Vincent, J. M. "A Study in Swiss History." Papers of American Historical Association, vol. 3, pp. 146-164. (1887.)

² Bourinot, J. G. "Canadian Studies in Comparative Politics." 1 vol. Montreal, 1890.

³ Freeman, E. A. "The Federal Constitution of Switzerland." *Fortnightly Review*, vol. 2, pp. 533-548.

—— "Presidential Government." *National Review*, Nov. 1864.

—— "Historical Essays," Series I., p. 373.

⁴ May, T. E. "Democracy in Europe." I., 333-403.

⁵ Fazy. "Les Constitutions de la République de Genève." Genève et Bâle, 1890.

⁶ Hilty, C. "Politisches Jahrbuch der schweizerischen Eidgenossenschaft, 1886-90. 5 Bde. Bern.

LITERATURE

on the international relations of Switzerland is also admirable. This subject has since been treated exhaustively by Professor Paul Schweizer of the University of Zürich. Properly viewed it becomes a part of European diplomatic history.¹ Stoll explains the durability of citizenship.² Rüttiman's essay on the origin of citizenship³ is old, but authoritative. Martin has written briefly upon the federal laws on civil status.⁴ Borel⁵ and Zeerleder⁶ comment upon the federal bankruptcy law. Schollenberger has gathered into compact form all the private liberties which the citizen may enjoy under the protection of state and nation.⁷ His work on cantonal administration is invaluable.

¹ Hilty, C. "Die Neutralität der Schweiz in ihrer heutigen Auffassung."

P. Schweizer. "Geschichte der schweizerischen Neutralität." Frauenfeld, 8vo. 1032 pp., 1895.

² Stoll, H. "Der Verlust des Schweizerbürgerrechts." Br. Zürich, 1888.

³ Rüttiman. "Ueber die Geschichte des schweizerischen Gemeindebürgerrechts." Br. Zürich, 1862.

⁴ Martin, Alfred. "Étude des Lois Fédérales sur la Responsabilité Civile." Genève, 1890.

⁵ Borel, Eug. "Das Bundesgesetz über Schuldbetreibung und Konkurs." Br. Neuchâtel, 1889.

⁶ Zeerleder. "Das Bundesgesetz über Schuldbetreibung und Konkurs." Br. Bern, 1889.

⁷ Schollenberger, J. "Die schweizerischen Freiheitsrechte." 81 Seiten. Zürich, 1888.

— "Die schweizerischen Handels- und Gewerbeordnungen." 95 Seiten. Zürich, 1889.

— "Grundriss des Staats und Verwaltungsrechts der schweizerischen Kantone." 3 Bde. 8vo. Zürich, 1897-1900.

GOVERNMENT IN SWITZERLAND

Vogt has illustrated the state-rights problem in a pamphlet on the Ticino question.¹

Among books on cantonal subjects, Curti's history of popular law-making will be read with interest.² It is the story of the rise and development of the Referendum. He has also a shorter essay on the same subject.³ The present condition of this institution is treated from the legal and philosophical standpoint by Keller.⁴ The most extensive work on the Referendum is by Signorel. This is a comparative study including all countries where direct legislation is in use. He concludes that it is not expedient to introduce the system in France, but this does not prevent a careful statement of the actual laws in Switzerland.⁵ De Ploige wrote extensively on this topic, but has been superseded by later writers.⁶ McCrackan advocates the adoption of Swiss methods for American political problems. He has also written some entertaining essays on Swiss travel and historical events.⁷

¹ Vogt, G. "Zur Tessiner-Frage." Br. Zürich, 1889.

² Curti, T. "Geschichte der schweizerischen Volksgesetzgebung." 1 Bd. Zürich, 1885.

³ — "Die Volksabstimmung in der schweizerischen Gesetzgebung." Br. Zürich, 1886.

⁴ Keller, A. "Das Volksinitiativrecht nach den schweizerischen Kantonsverfassungen." Br. Zürich, 1889.

⁵ J. Signorel. "Étude de Législation comparée sur le Referendum Législatif." (Rossi Prize Essay.) 8vo. Paris, 1896.

⁶ S. de Ploige. "Le Referendum en Suisse." 8vo. Brussels, 1892. Also translated into English.

⁷ W. D. McCrackan. "Swiss Solutions of American Problems."

LITERATURE

Borgeaud's comparative study of methods of constitutional amendment includes weighty chapters on Switzerland.¹ The foundations of democracy are here examined by a citizen of Geneva who has long studied his own and foreign lands. The comparisons of Swiss and American political methods are highly instructive. The best descriptions of *Landesgemeinde* are to be found in Rambert's "Studies."² Unlike most writers, he visited all the existing folk-motes, and wrote about them and other Swiss institutions in a genial as well as discriminating manner. Taxation in Switzerland has been most exhaustively treated by Georg Schanz.³ His first volume contains a historical account of the development of taxation from the beginning of the nineteenth century to the present. The other four volumes contain the laws of all the states on the subject, not only the existing statutes, but the measures which led up to them. It is a

12mo. 81 pp. Boston, 1894. See also various articles in periodicals on Direct Legislation and Proportional Legislation.

— "Romance and Teutonic Switzerland." 2 vols. 32mo. Geneva and Basel.

¹ Chas. Borgeaud. "Établissement et Revision des Constitutions en Amérique et en Europe." (Rossi Prize Essay.) 8vo. Paris, 1893.

— Same translated into English by C. D. Hazen, with an introduction by J. M. Vincent. 8vo. New York and London. Macmillan, 1895.

² Rambert, Eugène. "Études historiques et nationales." Lausanne, 1889.

³ Schanz, Georg. "Die Steuern der Schweiz in ihrer Entwicklung seit Beginn des 19. Jahrhunderts." 5 Bde. Stuttgart, 1890.

GOVERNMENT IN SWITZERLAND

monument of industry, and invaluable to the economist. Huber's "Private Law" is a comparative study, in which he gives under each topic the principles followed in the various states or regions of the confederation.¹ Dawson's "Social Switzerland" gives an interesting review of economic laws and social institutions. The labor question, invalid insurance, technical education, and the drink traffic are among the topics discussed.²

LAWS AND OFFICIAL PUBLICATIONS

Collections of documents which are especially useful for constitutional study of the past are the reports of the old Federal Diets.³ It was the custom at the close of each session to prepare a paper embodying the action and recommendations of the assembly upon the subjects brought before it. This was for the instruction of the state governments who sent delegates, and, as its name indicates, was the last word of the convention, a "letter of departure." The first series includes all known federal agreements between 1245 and 1798. Another series covers the period of the modern Diet, 1803

¹ Huber, Eug. "System und Geschichte des schweizerischen Privatrechts." 3 Bde. Basel, 1886-89.

² W. H. Dawson. "Social Switzerland: Studies of present day social movements and legislation in the Swiss Republic." 12mo. London, 1897.

³ "Amtliche Sammlung der älteren eidgenössischen Abschiede" (1245-1798). 8 Bde.

LITERATURE

to 1848,¹ while the papers of the Helvetic period are in process of collection and publication.

The present federal and state constitutions are published in an official collection.² Supplements contain the revisions made during intervals of publication. An excellent commentary on the federal constitution will be found in the records of the convention which formulated it in 1874.³ The Federal Statutes have entered upon a third series since 1849.⁴ A very convenient collection in three volumes is that of Wolf, which shows the revisions to date, and gains compactness by omitting preambles and signatures.⁵ Carl Stoss has assembled the various criminal laws of the country under topics for comparison.⁶ The complete decisions of the Federal Supreme Court have been published since 1875, but Ullmer's digest covers the period 1848-63.⁷

¹ "Repertorium der Abschiede der eidgenössischen Tagsatzungen v. Jahr 1803 bis 1848." 3 Bde.

² "Sammlung der Bundesverfassung und Kantonsverfassungen." Amtliche Ausgabe. Bern, 1 vol. with supplements.

³ "Protokolle über Bundesrevision." 1873-74. 1 Bd. Q.

⁴ "Amtliche Sammlung der Bundesgesetze und Verordnungen." 1849-74. 11 Bde.

— Neue Folge. 1874-89.

— Neue Folge, Zweite Serie (seit dem Jahre 1889).

⁵ Wolf. "Die schweizerischen Bundesgesetzgebung." Herausgegeben und mit Anmerkungen versehen, von P. Wolf. 3 Bde. Basel, 1890-91.

⁶ Stoss, Carl. "Die schweizerischen Strafgesetzbücher, zur Vergleichung zusammengestellt."

⁷ "Entscheidungen des schweizerischen Bundesgerichtes." Amtliche Sammlung. 1875 to date.

GOVERNMENT IN SWITZERLAND

The principal federal documents needed are the reports of the Federal Council¹ on the conduct of business, the Financial Reports,² and the Official Gazette.³ The latter is the organ through which laws and ordinances are announced weekly. Parliamentary practice is regulated by a printed code of rules, found in the statutes and printed separately.⁴ The debates of late years may be found in the shorthand reports.⁵ The early financial history is graphically displayed in a tabular view which includes the years 1853-84.⁶ The U. S. Consular Reports, from time to time contain important information concerning financial methods employed in Switzerland.⁷ Other numbers frequently report upon the industrial situation. Grob's "Jahrbuch" is the central authority upon educational matters.⁸ As a single specimen from the

Ullmer, R. E. "Die staatsrechtliche Praxis der schweizerischen Bundesbehörden." 2 Bde. Also translated into French by Borel.

¹ "Bericht des schweizerischen Bundesrathes an die Bundesversammlung." (Annual.)

² "Die eidgenössische Staats-Rechnung." (Annual.)

³ "Schweizerisches Bundesblatt." (Feuille Fédérale Suisse.) (Weekly.)

⁴ "Geschäftsreglementarische Bestimmungen für den eidgenössischen Rätbe." (Weekly.)

⁵ "Bulletin stenographique de l'assemblée fédérale." (2 francs per annum.)

⁶ "Uebersicht der Einnahmen und Ausgaben der Eidgenossenschaft." 1853-84.

⁷ "U. S. Consular Reports," Nos. 81, 90, 99-100. "Special," vol. xvi.

⁸ Grob, C. "Jahrbuch des Unterrichtswesens in der Schweiz." Zürich, 1881 to date.

LITERATURE

many local government laws, that of Zürich may be especially recommended.¹

The decisions of the Federal Supreme Court are published annually in German, French, and Italian.²

Almost every canton publishes an official gazette, called variously "Kantonsblatt," "Amtsblatt," "Bulletin Official," etc. This is the medium of communication between the government and the people. Public notices of all kinds, as well as private advertisements, are included. The contents form a mirror of the civic life of the community. Federal notices, elections, notifications on police, sanitary, and military matters are mingled with notices of marriages, births, deaths, divorces, and wills. With these will be found commercial registrations, auctions, criminal judgments, as well as the ordinances of the cantonal legislature.

STATISTICS

The statistics of population are found best in the federal census.³ This is confined chiefly to civil status, commercial and other statistics being tabulated in special reports⁴ which are published

¹ Kanton Zürich. "Gesetz betreffend das Gemeindewesen, vom 27 Juni, 1875." Br. Zürich, 1889.

² "Arrêts du Tribunal fédéral Suisse depuis l'année 1875." Lausanne. (Published by authority of the court.)

³ "Die eidgenössische Volkszählung," 1880, 1888. (Census of 1900 in preparation. Published by the Federal Government.)

⁴ "Schweizerische Statistik. Herausgegeben von dem Statistischen Bureau d. Eidgen. Department des Innern." 1-65 Lieferungen, 1862-86.

GOVERNMENT IN SWITZERLAND

from time to time by the Statistical Bureau of the Interior Department. From the same source comes also a quarterly journal of statistics.¹

Wirth's general description of Switzerland, although published in 1875, contains much of permanent value.² It is divided into parts, which describe successively the natural features of the country, the people, commerce, insurance, justice, constitutions and laws, education. Many changes have taken place in constitutions since this was published. The best work of the kind now is Furrer's "Lexicon."³ One may also consult the "Statesman's Year Book" and the "Almanach de Gotha."

TOPOGRAPHY

The best map of Switzerland is that known familiarly as the Siegfried Atlas, which is published on the scale of the original measurements, namely, 1:25,000 for flat land and 1:50,000 for mountains. When complete this will comprise more than 350 sheets.⁴ Smaller than this is the map made under the direction of General Dufour,

¹ "Zeitschrift für schweizerische Statistik. Herausgegeben von der Central Kommission der schweiz. statist. Gesellschaft, unter Mitwirkung des eidg. statist. Bureau." (Quarterly.) Bern.

² Wirth, Max. "Allgemeine Beschreibung und Statistik der Schweiz." 3 Bde. Zürich, 1871-75.

³ Furrer, A. "Volkswirtschafts-Lexikon der Schweiz." 3 Bde. Bern, 1885-91.

⁴ "Topographischer Atlas der Schweiz, im Massstab der Original-Aufnahmen." Herausgegeben v. Eidg. Stabsbureau.

LITERATURE

in twenty-five sheets, which, in its day, was also the federal ordinance map.¹ An excellent wall-map, because of the distinctness with which the physical features of the country are thrown up, is a late one of Ziegler.² W. A. B. Coolidge has written a history and bibliography of Swiss travel, especially of mountain exploration.³ There are numerous other small maps and guide-books.

BIBLIOGRAPHY

To find out everything that has been written upon Swiss history, one should begin with Haller.⁴ His work was continued by Meyer von Knonau⁵ in magazine reports, and in book-form by Sinner⁶ as far as 1851. Later, Von Mulinen wrote an introduction to the whole subject of Swiss bibliography.⁷ Since 1871 a monthly record of all publi-

¹ Dufour. "Topographische Karte d. Schweiz." 1:100,000. Complet in 25 Blättern.

² Ziegler. "Zweite Wandkarte der Schweiz," in 8 Blätter. J. Würster & Co. Zürich.

³ Coolidge, W. A. B. "Swiss Travel and Swiss Guide-Books." 1 vol. London, 1889.

⁴ v. Haller, G. C. "Bibliothek d. schweiz. Geschichte und aller Theile so dahin Bezug haben." 6 Bde. Bern, 1875-88.

⁵ Meyer von Knonau, G. "Fortsetzung von Haller's Bibliothek," in Archiv für schweiz. Gesch., 1840-45.

⁶ v. Sinner, G. "Bibliographie der Schweiz. Geschichte, 1786-1851." Bern, 1851.

⁷ v. Mulinen. "Prodromus einer schweiz. Historiographie." Bern, 1874.

GOVERNMENT IN SWITZERLAND

cations has appeared in "Bibliographie Suisse,"¹ to which an annual index is furnished. Switzerland is also represented in the "Historical Year Book," published under the auspices of the Historical Society of Berlin.² Annual reports on the historical and political literature will be found in Hilty's "Jahrbuch"³ and in the "Anzeiger für schweizerische Geschichte."⁴

¹ "Bibliographie und Literarische Chronik der Schweiz." 1871 to date. Basel. H. Georg. (3 fr. per year in Postal Union.)

² "Jahresbericht der Geschichtswissenschaft." Berlin. 1878-99.

³ See Special Questions, above.

⁴ "Anzeiger für schweizerische Geschichte." Herausg. von der Allgem. geschichtsforschenden Gesellschaft der Schweiz. Bern.

V

STATISTICS OF SWITZERLAND

CANTONS	AREA IN SQUARE MILES	POPULATION 1888	POPULATION PER SQ. MILE	CANTON CAPITAL
Zürich	665	337,183	507	Zürich
Bern	2,660	536,679	201	Bern
Luzern	580	135,300	233	Luzern
Uri	415	17,249	41	Altorf
Schwyz	351	50,307	143	Schwyz
Unterwalden-Ob. }	295	15,041	94	Sarnen
Unterwalden-Nid. }		12,538		Stanz
Glarus	267	33,825	126	Glarus
Zug	92	23,029	250	Zug
Freiburg	644	119,155	185	Freiburg
Solothurn	303	85,621	282	Solothurn
Baselstadt	177	73,749	766	Basel
Basel-Land		61,941		Liestal
Schaffhausen	116	37,783	325	Schaffhausen
Appenzell-Ausser . }	162	54,109	413	Herisau
Appenzell-Inner . }		12,888		Trogen
St. Gallen	780	228,160	292	Appenzell
Graubünden	2,765	94,810	34	St. Gallen
Aargau	542	193,580	357	Chur
Thurgau	382	104,678	274	Aarau
Ticino	1,095	126,751	115	Frauenfeld
Vaud	1,245	247,655	198	Bellinzona
Valais	2,026	101,985	50	Lausanne
Neuchâtel	312	108,153	346	Sion
Genève	109	105,509	967	Neuchâtel
Total	16,021	2,917,740	183	Genève

The Federal Census will be again taken in December, 1900, but the above statistics of the population in 1888 will be useful for comparison. Annual estimates of population are made by the Bureau of Statistics but are not regarded as legally authoritative.

GOVERNMENT IN SWITZERLAND

LEGISLATIVE POWERS

CANTONS	FINAL LEGISLATIVE RESORT ON IMPORTANT QUESTIONS	EXPENDITURE REQUIRING POPULAR VOTE. FRANCS	MEMBERS IN FEDERAL HOUSE OF REP'S
Zürich	Obligatory Referendum	250,000	17
Bern	Obligatory Referendum	500,000	27
Luzern	Optional Referendum	200,000	7
Uri	Landesgemeinde		1
Schwyz	Obligatory Referendum	50,000	3
Unterwalden-Ob	Landesgemeinde		1
Unterwalden-Nid	Landesgemeinde		1
Glarus	Landesgemeinde		2
Zug	Optional Referendum	40,000	1
Freiburg	Legislature		6
Solothurn	Obligatory Referendum	100,000	4
Baselstadt	Optional Referendum		4
Basel-Land	Obligatory Referendum		3
Schaffhausen	Optional Referendum		2
Appenzell-Ausser	Landesgemeinde		3
Appenzell-Inner.	Landesgemeinde		1
St. Gallen	Optional Referendum		11
Graubünden	Obligatory Referendum	100,000	5
Aargau	Obligatory Referendum	250,000	10
Thurgau	Obligatory Referendum	50,000	5
Ticino	Optional Referendum		6
Vaud	Optional Referendum	1,000,000	12
Valais {	Obligatory Financial Referendum	{ 60,000	5
Neuchâtel	Optional Referendum	500,000	5
Genève	Optional Referendum		5

INDEX

- Aargau, 23, 34; administration, 93; salt monopoly, 116.
 Act of Mediation, 29.
 Administration, cantonal, 91-111.
 Adolf of Nassau, King, 10.
 Alamanni, 3, 4.
 Albert, King, 10, 11.
 Alcohol monopoly, federal, 126, 245-253; Basel, 118.
 Allegiance, dissolution of, 278.
Allmend, 131, 142.
Allmendgenossen, 142.
 Amendment, cantonal constitutions, 46, 89; federal, 193-199; vetoed, 198.
Amt, 96.
Amtsgericht, 103.
Amtsstatthalter, 96.
Anklagekammer, 206.
 Anti-semites, 197.
 Appeals to Supreme Court, 205; to Federal Council, 214.
 Appenzell, 21, 29; *Landesgemeinde*, 64; division, 153.
 Appenzell Exterior, justice in, 103.
 Arbitration by magistrate, 102.
 Archivist, federal, 270.
 Area of confederation, 41; cantons, 361.
 Army, 30, 220-228.
 Army Contingent Fund, 243.
Assemblée Générale, 149.
 Assembly, Federal, 175-187; laws referred, 192; constitutional revision, 193.
 Assessment, self-, 126.
Assizenbezirke, 206.
 Association, right of, 280.
 Attestation of laws, 186.
 Attorney-General, federal, 206; cantonal, 105.
Aufenthalter, 139.
 Austria, 10, 11, 13, 16.
Auszug, 224.
 Avalanche protection, 266.
 Ballot, proportional system, 77-78.
 Bank of Freiburg case, 207.
 Bank-notes, no monopoly, 244.
 Bankruptcy, concordats, 201.
 Bankruptcy law, 215, 258; court, 206.
 Banks, cantonal, 121; community guaranty, 122; federal tax, 244.
 Basel, history, 21, 22, 30.
 Basel-City, 35; elections, 76; referendum, 85; alcohol monopoly, 118; university, 170; taxation, 338.
 Basel-Land, referendum in, 54; state fortune, 114; salt monopoly, 117.
 "Beiwagen," 62.
 Bern, history, 13, 14, 15, 18, 19, 27, 30, 34; mediæval government, 134; domains, 114; city elections, 81, 82; university, 170.
Bezirk, 96.
Bezirksammann, 96.
Bezirksamt, 97.
Bezirksgemeinde, 99.
Bezirksgericht, 103.
Bezirksrath, 97.
Bezirksstatthalter, 96.
 Bibliographical collections, 359.
 Bibliography, history and constitution, 341-360.

INDEX

- Bi-cameral system, 178.
- Bills, Federal Assembly, 181.
- Bishoprics, Roman Catholic, 157, 275; Old Catholic, 158.
- Bund, Der ewige*, 285-288.
- Bundesgericht*, 202-209.
- Bundesrath*, 210-219.
- Bundesstraßengericht*, 206.
- Bureaucracy, 110, 265.
- Burg*, 133, 134.
- Bürger*, 139, 143.
- Bürgergemeinde*, 140, 144, 145.
- Burgundians, 3.
- Burial, right of, 276.

- Cabinet crises, 218.
- Cabinet, see Federal Council.
- Calvin, 163.
- Cantonal constitutions, amendment of, 46.
- Cantonal debts, 128.
- Cantonal legislation, 52-74.
- Cantonal treaties, 200.
- Cantons, area, population, 361; capitals, 361; classification, 53; conflicts between, 49; relation to confederation, 40-51.
- Capital punishment, 281.
- Capitals, cantonal, 361.
- Centgraf*, 4, 5, 7, 8.
- Centralization, 192.
- Cercle*, 96.
- Chancellor, Federal, 185, 214.
- Christkatholische Kirche*, 158.
- Church and state, 152-164.
- Church buildings, 163.
- Church history, early Swiss, 152.
- Citizenship, history of, 130-143; based on community, 135.
- Civil service, cantonal, 108-111; federal, 212.
- Clergy, 161; debarred from *Nationalrath*, 176.
- Clôture*, Federal Assembly, 185.
- Coinage system, 265.
- Commerce, federal regulation, 257.
- Committees, Federal Assembly, 181.
- Commons-Corporation, 140.
- Commune bourgeoise*, 140, 142, 150.
- Community, early history, 130-143.
- Concilium*, Tacitus', 55, 61.
- Concordats*, 200.
- Confederation in relation to cantons, 40-51.
- Confession of faith, 162.
- Congress of Vienna, 31; see Vienna.
- Conseil Communal, 150.
- Conseil des États, 178.
- Conseil d'État*, 91; in Geneva, 150.
- Conseil Fédérale*, 210-219.
- Conseil Générale*, 149.
- Conseil Municipal*, 145, 147.
- Conseil National*, 175-178.
- Consiglio di Stato*, 91.
- Constitution, Federal, of 1291, history, 8-10; text, 285-288; of 1803, 26; of 1848, 37; of 1874, 289-332.
- Constitutional amendments, cantonal, 89.
- Constitutional convention, cantonal, 90.
- Constitutional history, bibliography of, 346-360.
- Constitutional interpretation, 106.
- Constitutionality, federal courts and, 207.
- Consuls, 233.
- Contracts, federal law of, 258.
- Copyrights, International Bureau, 234.
- Corporal punishment, 281.
- Corporationsgemeinde*, 140.
- Council of State, cantonal, 91-100; in Geneva, 150.
- Council of States, 178.
- Council, The National, 175.
- Councils, town, 145, 147.
- Criminal courts, federal, 205.
- Cumulative vote, 78.
- Customs, 238, 253.

- Death penalty, 281.
- Debates, Federal Assembly, 183.

INDEX

- Debt, federal, 254.
- Debt, no imprisonment for, 281.
- Decorations, foreign, 232.
- Delegation of power in United States, 88.
- Democracies, 54-65.
- Democracy and education, 172; Rousseau on, 89.
- Departments, federal, 213.
- Diet, old federal, 23-26, 30, 32, 34, 37.
- Diplomatic intercourse, 233.
- Direct legislation, federal, 188-199; cantonal, 73, 84-90; list, 362; see *Landesgemeinde*, Referendum, Initiative.
- Disestablishment proposed, 164.
- Dissenters, 157.
- District, cantonal, 96-100; judiciary, 103; finance, 112.
- Districts, election, in cantons, 76.
- Districts, federal legislative, 175.
- Domains, alienation of, 100.
- Domains, cantonal, 113.
- Dorfgericht*, 103.
- Ecclesiastical courts, 281.
- École complémentaire*, 169.
- Education, in cantons, 165-172; compulsory, 165, 168; expenditures for, 168; under democracy, 172; primary, 165, 167; secondary, 170; higher, 170; military, 225, 270; federal aid to, 268.
- Ehe-gaumer*, 160.
- Einwohnergemeinde*, 140.
- Elections, 69, 75-83.
- Élite*, 224.
- Endowments, charitable, 114.
- Equality, 277.
- Eschenthal, 23.
- Establishment, Church, 156.
- Evangelical Church, 158.
- Executive, cantonal, 91-100; relation to local, 94, 100; federal, 210-219.
- Exit, right of, 278.
- Expansion, territorial, 22, 46.
- Expenditures, cantonal, 127; federal, 253.
- Extradition, cantonal, 201; federal, 233.
- Factory laws, 198-257.
- Federal Assembly, 176-187; duties, 179; inviolability, 180; procedure, 181; sessions, 182; languages, 183; committees, 184; records, 185; bills, 211.
- Federal Council, 210-219; legislative work, 181-187.
- Federal intervention, 48.
- Federal Tribunal, origins, 24.
- Feudal system in Switzerland, 5, 6, 7, 8, 9.
- Finance, cantonal, 112-129; federal, 213, 236-255.
- Fire extinction, personal service in, 121.
- Fishing licenses, 268.
- Folk-motes, the Swiss, 54-65.
- Forest cantons, 14, 18; league of 1291, text, 285-288.
- Forestry, 266.
- Fortbildungsschulen*, 169.
- Fortifications, 227, 231.
- Fortune, federal, 238.
- Franco-Prussian war, 231.
- Frederic, Duke of Austria, 11, 12.
- Frederic II., Emperor, 8, 10.
- Free Church, 157.
- Free-list ballots, 77.
- Free trade, intercantonal, 256.
- Freiburg, history, 19, 21, 30, 37; government, 73; elections, 76; town government, 146; university, 170; bank case, 207.
- French Directory, 27.
- French Revolution, influence of, 26, 32.
- French Revolution of 1830, 33.
- French Swiss, origin of the, 3.
- Friedensrichter*, 102.
- Frontier defence, 227, 231.

INDEX

- Gambling houses, 259.
Gau, 4, 5, 7, 8.
Gemeindeammann, 145, 146.
Gemeinde Hauptmann, 145.
Gemeinde President, 95, 144.
Gemeinderath, 145, 147.
Gemeindeversammlung, 143.
Gemeine Vogteien, 22, 25, 27, 154.
 Geneva, 22; elections, 83; referendum, 85; town councils, 150; religious liberty, 162; vote on disestablishment, 164; university, 170.
 Geneva arbitration, 234.
 Germanic cantons, usages, 150, 151.
 Gerrymandering, 176.
 Gersau, 57.
 Glarus, 13, 15, 29; *Landesgemeinde*, 56, 57, 61; taxation, 334.
 Governor, comparison with United States, 94, 95.
Graf, 4, 5, 7, 8.
Grand Conseil, 66.
 Grand Council, see Cantonal Legislatures, 66.
 Graubünden, 22, 29; referendum, 84; taxation, 125, 333.
Grosser Rath, see Cantonal Legislatures, 66.
Grundsteuer, 123.
 Guaranty, the federal, 282.
 Gunpowder monopoly, 223; receipts, 241, 257.
 Habsburg, house of, 8, 10, 12; see also Rudolf, Albert.
 Half-cantons, 40, 153.
Heimath, 137, 138.
Heimathlosen, 137.
Heimathrecht, 140.
Heimathschein, 138.
Heimatlosigkeit, 204.
 Helvetic Republic, history, 26; local government, 134; military, 222.
 Henry VII., Emperor, 11.
Hintersässen, 132.
 Histories of Switzerland, 341-346.
 Hunting licenses, 268.
 Illiteracy, 172.
Impôt Foncier, 123.
 Imprisonment for debt, 281.
 Income tax, 123, 333, 338, 339.
 Incompatibility, 109.
 Individual rights, 277-282.
 Inheritance tax, 123, 336.
 Initiative, cantonal, 84-90; federal, 195.
 Insurance, fire, cantonal, 120; federal, invalid, and accident, 271; "labor," 272.
 Intemperance, suppression of, 250.
 Interior department, 253.
 International relations, 229-235.
 Intervention, federal, 48.
 Israelites, 156, 273.
 Jesuits, 36, 176; debarred, 275.
 Jewish slaughter methods, 197.
 Jews, see Israelites.
 Jobbery, control of, 110.
 Judicial powers of canton executive, 93, 98.
 Judiciary, district, 99; cantonal, 101-107; federal, 101, 202-209.
 Jury system, cantonal, 104; federal, 206.
Jus non evocando, 11, 281.
 Justice of the Peace, 102.
Kantonsgericht, 104.
Kantonsrath, see Cantonal Legislatures, 66.
Kirchenrath, 159, 160.
Kirchenvogt, 145.
Kirchgemeinde, 140, 143, 145, 160.
Kreisfond, 236.
Kreis, 96.
Kriminalkammer, 206.
 Labor, right to, 198.
Landammann, 59, 60, 94.
Landesgemeinde, 54-65; origin, 134.

INDEX

- Landfrieden*, the four, 154.
Landrath, 66.
Landsturm, 224, 226.
Landwehr, 224.
 Languages, 41-43; in the Federal Assembly, 183.
 Lausanne University, 170; Supreme Court in, 203.
 Law and the people, 188-199.
 Law, bibliography, 354.
 Law school, projected, 268.
 League, first perpetual, 9, 56; text, 285-288.
 League of Eight, 14.
 League of Thirteen, 21-26, 56.
 Legislation, cantonal, 52-74; federal, 175-201; executive in, 92; Federal Council in, 211; inter-cantonal, 200.
 Legislative districts, 67.
 Legislative powers of cantons, table, 362.
 Legislature, federal, 175-187.
 Legislatures, cantonal, 66-74.
 Leopold of Austria, 11.
 Library legislation, Ohio, 148.
 Licenses, 113, 120, 122.
 Literature of constitutional history, 341-360.
 Local government, 130-151.
 Lotteries, 259.
 Louis of Bavaria, 11, 12.
 Luzern, early history, 8, 12, 20, 30, 34, 36, 37; referendum, 73, 85; obligatory acceptance of office, 110; mediæval government, 134; taxation, 339.

Maire, 98, 145, 146.
 Maps, 358.
Mark, 130.
Markgenossenschaft, 6, 7, 130, 134, 141.
 Mayor, 98, 145, 146.
 Measures, weights and, 266.
 Mercenary service, abolished, 229.
 Metric system, 266.
 Migration, 278.
 Mileages, 177.
 Military capitulations, 30, 230.
Military examination, 170.
 Military Exemption Tax, 124, 223, 241, 253.
 Military expenditures, 253.
 Military fund, 236.
 Military system, 220-228; centralization of, 222.
 Mines, 118.
 Ministers, foreign, 233.
 Minority representation, 75-83.
 Minutes, Federal Assembly, 186.
 Monetary Union, 265.
 Monopolies, cantonal, 115.
 Monopoly, alcohol, 245-253; other federal, 257; matches, 198.
 Morgarten, 11.
 Municipal government, early, 26.
 Murbach, abbey of, 12.

 Napoleon I., 29.
Nationalrath, 175; officers of, 177; sessions, 178.
 Neuchâtel, history, 22, 35; elections, 76, 78; referendum, 85.
 Neutrality, 229-235.
 Nidwalden, *Landesgemeinde* in, 60, 65.
Niedergelassenen, 133, 139, 143, 144.
 Nominations, 76.
 Non-residents, concordats, 201.

*Oberamtman*n, 96.
Obligationenrecht, 258.
 Office, compulsory acceptance, 110.
 Official publications, bibliography, 354.
 Ohio legislation, example, 148.
 Old Catholics, 156, 158.
 Oligarchies, mediæval, 26; fear of, 109.
 Orphans Courts, 98, 147.

 Pact of 1815, 31-37.
 Paper money, no monopoly, 122.

INDEX

- Paris, Treaty of 1856, 232.
 Parish, see *Kirchgemeinde*.
Parität, 154.
 Parliamentary procedure, 181.
 Pastors, 161; no religious tests, 162.
 Pensions, military, 226; foreign, 232.
 Periodicals, 172.
 Personal liberty, 277-282.
 Petition, imperative, see Initiative, 86.
 Petition in United States, 88.
Pfaffenbrief, 15, 20.
 Physical geography of Switzerland, 41.
 Policy, foreign, 233.
 Political Community, 140.
 Political offences not capital, 281.
 Poll-tax, 123.
 Polytechnicum, federal, 168, 170, 269.
 Poor overseers, 161.
 Population, 41; statistical table, 361.
 Postal rates, 241.
 Postal Union, 234.
 Posts and Telegraphs, receipts from, 240, 253; services of, 259.
 Powers, separation of, 108.
 Prefect, 96.
 President, cantonal, 94.
 President of the Confederation, 210.
President, Gemeinde, 98.
 Press, liberty of the, 280.
 Privilege forbidden, 278.
 Probate courts, 98.
 Progressive taxation, 124.
 Proportional representation, 75-83.
 Protestant cantons, 156.
Protokollführer, 186.
 Public debts of cantons, 128.
 Public fortune, 114.
 Public service, 108-111.
 Public works, federal aid for, 113, 129, 266.
 Qualifications for *Nationalrath*, 176.
 Quorum, Federal Assembly, 181.
 Quotient, electoral, 78.
 Race differences in Switzerland, 3, 4, 42, 43.
 Railway Transportation, International Bureau of, 234.
 Railways, state, 119; federal regulation, 261; nationalization of, 264; taxation of, 240.
Rath, Grosser, see Grand Council.
Rath, Kleiner, 91.
 Records, Federal Assembly, 185.
 Red Cross, Order of, 234.
 Referendum, 72; obligatory, 72-74; optional, 84-90; financial, 73; federal, 188-199; table of cantons employing, 362.
 Reformation, 152.
Regierungsrath, 91.
 Registration, civil, 276, 279.
 Relationship between officials, 109.
 Religion, confederation and, 272-276.
 Religious liberty, 152-155.
 Religious matters, concordats on, 201.
 Representation, ratio in cantons, 67-69; tabular view, 68; compared with United States, 69; proportional, 75-83.
 Representatives in National Council, 175; number from each canton, 362.
 Republic, Freiburg a, 73.
 Reserve, military, 224.
 Resident community, 140.
 Responsibility, official, 110.
 Revenue, federal sources of, 238; cantonal, 113.
 Revision, see Amendment.
 Rivers, 266.
 Roads, federal supervision, 266.
 Roman Catholic cantons, 156.
 Romance cantons, usages, 149.
 Romans in Switzerland, 4.

INDEX

- Rotation in office, 110; federal, 211, 218.
 Rousseau on democracy, 89.
 Royalties, cantonal, 113, 119.
 Rudolf of Habsburg, 8, 9.
- Salaries, cantonal representatives, 70; common council, 147; pastors, 161, 163; *Nationalrath*, 177; federal judges, 204; Federal Council, 210.
 Salt monopoly, 115.
 Salvation Army, 275.
Sarnerbund, 35.
 Schaffhausen, 21; referendum, 73, 85.
 School age, 170.
 School boards, 146, 166.
 School districts, 142, 146.
 School inspection, 168.
Schulgemeinde, 146, 166.
Schulrath, 166.
Schützenfeste, 225.
 Schwyz, early history, 5, 6, 7, 8, 10, 13, 14, 18, 29, 35, 37, 55; district government in, 98.
 Sea-rights, Swiss, 232.
Sempacher Brief, 16, 20, 211.
 Sessions of *Nationalrath*, 178.
Siebner-concordat, 34.
 Slaughter of animals, law, 197.
 Socialists, 198.
 Solidarity of Federal Council, 215.
 Solothurn, 30; elections, 76, 81; administration, 93; taxation, 340.
Sonderbund, 36, 176, 276.
 Sovereignty, 44, 46.
Staatsanwalt, cantonal, 105; federal, 206.
Staatsvermögen, 114.
Ständerath, 178.
Standeskommission, 91.
 Stanz, Diet of, 20.
Stanzerverkommniss, 17-21.
 State-rights, 23, 24, 25, 32, 34, 38, 44, 45, 179.
 Statistical tables, 361, 362.
- Statistical works, bibliography, 357.
 Statistics, Bureau of, 270.
Statthalter, 95.
Stillstand, 160.
 St. Gallen, 22, 34; referendum in, 84.
 Strassburg, 22.
 Subject territories, 22, 25, 27, 154.
 Supervision of local government, 94, 100, 149, 150.
 Supreme Court, federal, 24, 202-209, 282.
Syndic, 145, 146.
 Synod, 159.
Synodalkommission, 159.
- Tariff, 238, 253.
 Taxation, in *Bezirk*, 99; direct, cantonal, 123; indirect cantonal, 112-122, 127; income, 333, 338, 339; inheritance, 336; local, 127; principles followed, 238; progressive cantonal laws, 333-340; property, 123; for religious purposes, 274, 279.
 Tax-dodging, 126.
 Telegraph, management, rates, 261.
 Telegraphs, International Bureau, 234.
 Telephone, 240.
 Tell, William, 10, 11.
 Tenure of office, cantonal, 106; Federal Council, 216.
 Territorial expansion, 22, 46.
 Theological students, 164.
 Theological tests, 157, 162.
 Ticino, proportional representation, 82; referendum, 85; revolution, 49-51; no bishop, 157.
 "Ticino Question," 49-51.
 Titles of nobility, 232.
 Toleration, 153.
 Topography, Swiss, 358.
 Town councils, 145.
 Town-meetings, 143.
 Trade-unions, 198.

INDEX

- Treaties, cantonal, 48; intercantonal, 200.
Treaty-making power, 45.
Treaty of Paris, 1856, 232.
Tribunal Fédérale, 202-209.
Tribunal of residence, right of, 280.
Triple Council in Glarus, 62.
Trogen, *Landesgemeinde* in, 64.
Tunnels, federal subsidies for, 267.
- United States, old confederation compared, 25; constitutional history compared, 37; amendment of constitutions, 199.
Universities, 170, 268.
Untergericht, 103.
Unterwalden, early history, 5, 13, 14, 18, 29, 35, 37.
Urgency, 189.
Uri, early history, 5, 6, 7, 8, 9, 10, 18, 19, 35, 37; *Landesgemeinde*, 56, 57, 58, 62, 64; legislature, 68, 71.
- Vagrancy, mediæval, 135; concordats, 201.
Valais, history, 22, 35, 37; referendum, 73.
Vaud, referendum in, 73; legislation in, 96; town councils, 150.
Verbündete Orte, 22.
- Vermittler*, 102.
Veto, popular, 85; canton executive without, 95; no presidential, 186.
Vice-Chancellor, Federal, 185.
Vice-President of Federal Council, 210.
Vienna, Congress of, 31, 230.
Vorort, 30.
Voters, percentage of, 65.
Votes in Federal Council, 214.
- "*Wahlkreisgeometrie*," 176.
Wallis, referendum in, 84.
Weibel, 60.
Weights and measures, 266.
Worship, freedom of, 274.
- Zähringen, house of, 7.
Zug, history, 13, 18, 29, 37; referendum, 73, 85; elections, 76.
Zugewandte Orte, 22.
- Zürich, early history, 7, 8, 13, 14, 18, 20, 30, 34; direct legislation, 87; local government act, 110; obligatory acceptance of office, 110; progressive taxation in, 124, 127; public debt, 128; mediæval government, 134; university, 170.
Zwingli, 163.

The Citizen's Library of Economics Politics, and Sociology

UNDER THE GENERAL EDITORSHIP OF

RICHARD T. ELY, Ph.D., LL.D.

*Director of the School of Economics, and Political Science and History
Professor of Political Economy at the University of Wisconsin*

12mo. Half Leather. \$1.25 NET each

MONOPOLIES AND TRUSTS

By **RICHARD T. ELY, Ph.D., LL.D.**

"It is admirable. It is the soundest contribution on the subject that has appeared."—Professor **JOHN R. COMMONS.**

"By all odds the best written of Professor Ely's works."

—Professor **SIMON N. PATTEN**, University of Pennsylvania.

THE ECONOMICS OF DISTRIBUTION

By **JOHN A. HOBSON**, author of "The Evolution of Modern Capitalism," etc.

WORLD POLITICS

By **PAUL S. REINSCH, Ph.D., LL.B.**, Assistant Professor of Political Science, University of Wisconsin.

ECONOMIC CRISES

By **EDWARD D. JONES, Ph.D.**, Instructor in Economics and Statistics, University of Wisconsin.

IN PREPARATION FOR EARLY ISSUE ARE

ESSAYS IN THE MONETARY HISTORY OF THE UNITED STATES

By **CHARLES J. BULLOCK, Ph.D.**, Assistant Professor of Political Economy, Williams College.

GOVERNMENT IN SWITZERLAND

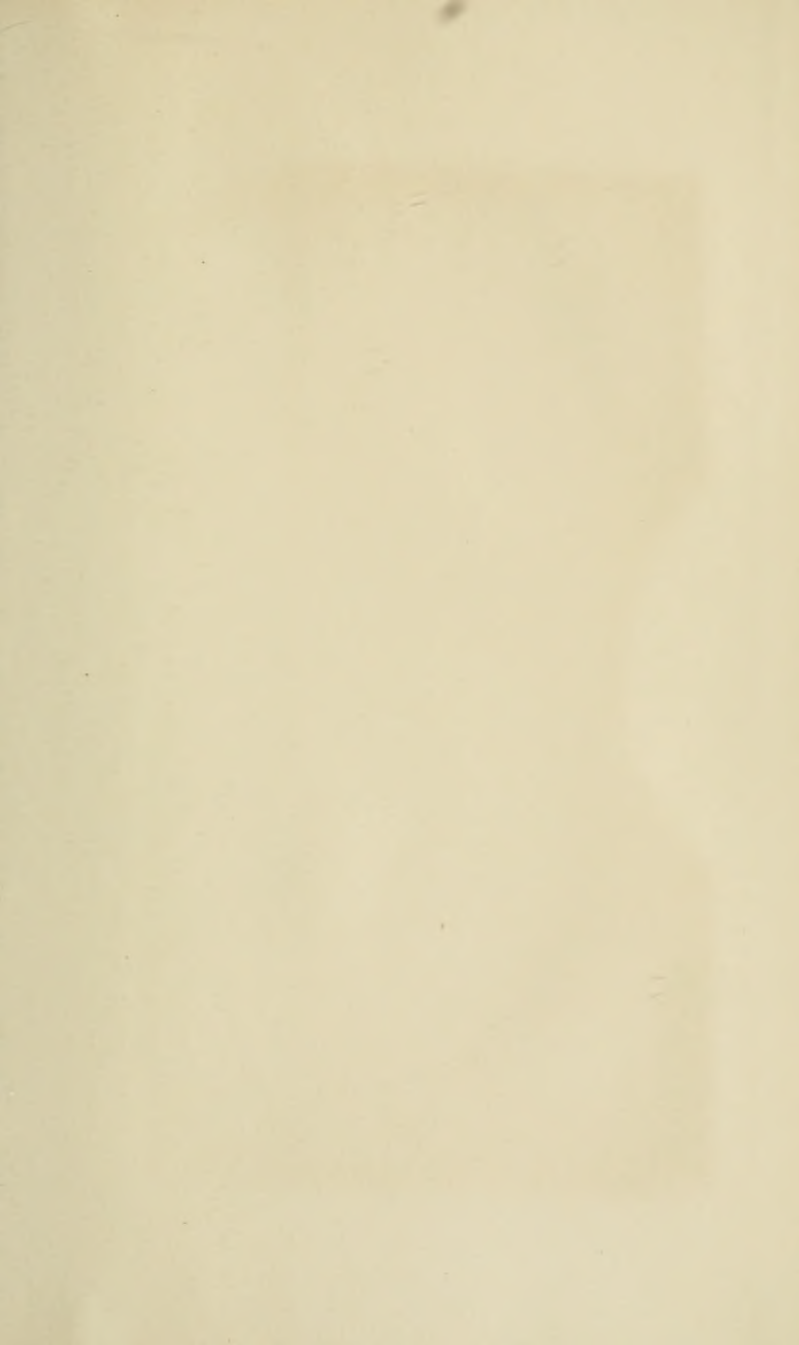
By **JOHN MARTIN VINCENT, Ph.D.**, Associate Professor of History, Johns Hopkins University.

HISTORY OF POLITICAL PARTIES IN THE UNITED STATES

By **JESSE MACY, LL.D.**, Professor of Political Science in Iowa College.

THE MACMILLAN COMPANY

66 FIFTH AVENUE, NEW YORK





FL 13-7-66

UNIVERSITY OF TORONTO
LIBRARY

Do not
remove
the card
from this
Pocket.

Acme Library Card Pocket
Under Pat. "Ref. Index File."
Made by LIBRARY BUREAU

-3

